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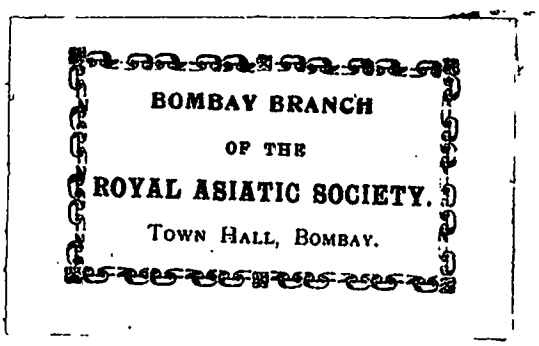

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REPORTS

OF

CIVIL CAUSES

ADJUDGED BY THE

COURT OF SUDUR UDALUT,

FOR THE

103168

PRESIDENCY OF BOMBAY,

a 1

BETWEEN THE YEARS

A. D. 1800 AND A. D. 1824;

DIVIDED INTO TWO PARTS,

THE CASES IN THE FIRST BEING SELECTED FROM THE DECISIONS OF THE COURT IN BOMBAY, BEFORE ITS REMOVAL TO SURAT, ON THE

1ST JANUARY 1821,

THOSE IN THE SECOND FROM THE DECISIONS AT SURAT UP TO THE

31ST MAY 1824;

WITH AN

APPENDIX,

AND AN

INDEX TO THE REPORTS.

X. d. 4

VOL. I.

Bombay:
PRINTED AT THE COURIER PRESS,
NO. 1, CHURCH GATE STREET, BY SHREECRUSTNA JAGONNATHJEE PRABHOO, HINDOO, OF NO. 15, PALLOW STREET, WITHOUT THE FORT OF BOMBAY.

1825.

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PREFACE.

THE Selection of the following Reports was directed, along with other measures, for the purpose of forming a body of information regarding the laws and usages in force among the Natives under the Presidency, which was hoped might ultimately form the Groundwork of a rational and Consistent digest for the guidance of the Courts of Justice. It has been made very general with a view to reap the advantage of former decisions upon as many subjects as possible for Precedents, and to prevent the possibility of having Contrary decisions on the same point, which from a period of twenty four years having elapsed, without any thing of the kind having been before done, became more probable every day,

All decisions relating to land have, likewise, been preserved in the selection, and if with one or two exceptions, no important points of landed tenures have been settled, the decisions on the Konkunee Cases alone, will still be valuable, as shewing the nature of the Wuttundaree disputes there, the way in which possession varied under the native Government, and the steps taken by the Sudur Udalut to fix some general principle for deciding such cases.

With

With respect to the form of the Reports, it differs so materially from those of Bengal, the only work of the kind relating to the country Courts published in India, that it is necessary to explain why a different plan has been adopted.

It has been before stated, that these Cases are to form precedents for future decisions, and as it was conceived that when a person has to follow a precedent, he never can do it so well as when the guiding Case lies fully before him, every point ready for comparison with the suit he is about to decide, it was determined to make them so full that every thing in any way relating to the Case itself should be preserved. But had they been confined to this alone, many points of great importance, incidentally decided by the Superior Court, might have been lost, or perhaps reversed at a future period, whilst as it was of consequence to assimilate the process of the different Courts as much as possible to that of the Sudur Udalut, so even with the greatest care it was not likely to be accomplished until generally made known through the Press. Under this idea, every thing of the kind occurring in any Case, whether strictly relating to it or not, and valuable miscellaneous orders passed by the Sudur Udalut, without reference to any particular cause on the File, have been included in the Reports or collected among the selection of Summary orders in the Appendix.

And as no examples had ever been given of the nature of litigation in an Udalut, it was thought not to be time lost

or misapplied to follow a course which should exhibit the mode in which Justice is administered in the Company's Courts. The process in its material parts has been preserved throughout; the pleadings, which are in all respects strictly faithful, shew as well the merit of the dispute as the ingenuity and character of a native litigant. An outline of the evidence on both sides formed a necessary part of such a plan, in order to shew the grounds on which the decision was given, and though it may in some cases appear irrelevant, it has generally been preserved with a view to exhibit any useful or general information.

The fullness with which the Judge's opinions are recorded does not appear to call for much apology, since Reports of this nature would be incomplete without it; and, because it is of the utmost importance to those who are to be guided by a former decision, to know fully the principles and reasons on which the points of law are determined, by which, rather than by the mere decisions themselves, the lower Courts must be guided. It is also of use to see the principles on which the highest Company's Court under this Presidency as well as the Courts subordinate to it dispense justice.

It is perhaps a fortunate circumstance, proceeding from an unfortunate cause, the ignorance of the Natives in this part of the country, that there are three Books of Hindoo Law, and only three, generally referred to on points of Law, two of them being also universally acknowledged to be of the first

first authority by all Hindoo Lawyers. That such is the case is abundantly clear from every part of these Reports, where the names of the Mitakshura, Munoo, and Muyookhu, are alone mentioned by the Shastrees as the authorities for their Vyuvusthas.

The Mitakshura is a commentary on the institutes of Yagnyuwulkyu by Vignyaneshwur, of which Mr. Colebrooke says in his Preface to the translation of its chapter on inheritance, "The range of its authority and influence "is far more extensive than that of Jimuta Vahana's trea- "tise," (Mr. C's. translation of which is printed with it), "for it is received in all the schools of Hindoo Law, from "Benares to the Southern extremity of the peninsula of "India, as the chief groundwork of the doctrines which "they follow, and as an authority from which they rarely "dissent. The works of other eminent writers have con- "currently with the Mitakshura considerable weight in the "Schools of law which have respectively adopted them, as "the Smriti Chandrica in the South of India; the Chinta- "mani, Ritnacara, and Vivada Chandra in Mithila; the "Viramitrodaya and Camalacara at Benares; and "*the* "*Mayucha*" among the Marahattas; but all agree in ge- "nerally deferring to the authority of the Mitakshura, in "frequently appealing to its text, and in rarely, and at the "same time modestly, dissenting from its doctrines on par- "ticular occasions."

The

The Mitakshura is divided into three Udhyayu, or Books, and those again into Prukurns or Chapters. Its last Book, upon Penance, is rarely referred to, but a translation of the Index to the two first, is for the greater facility of reference to this standard work, annexed to the Reports.

The Muyookhu (" *Mayucha* " above) was written by Neelkunth Bhuttu, who divided it into twelve Books, each embracing a particular subject of Hindoo Law, and collectively styled the twelve Muyookhus of Bhugvut Bhaskur, or " Rays of the Sun" The Vyuvuharu Muyookhu is the only one referred to in Civil Law. It comprehends the very same subjects as the Vyuvuharadhyayu, or second Book, of the Mitakshura, being divided into the same number of Chapters, but under a different arrangement, and being more diffuse in most of them than that work.

The edition of Munoo here referred to, is the Munvurthu Mooktavulee, a commentary of Koollooku Bhuttu on the institutes of Munoo, which in his preface to the Digest, Mr. Colebrooke calls " the celebrated Glass of Koollooku " Bhatta." A comparison of this last Book with Sir William Jones's translation of Munnoo is perfectly easy, as the translation is made to correspond in the number of chapters (Udhyayu) and verses (Sloku) with the original.

From the enquiries made it is believed that not many other works are even known; of them very few persons possess copies, and from an illiberal spirit resulting from ignorance,

rance, much dislike is shewn by the owners to afford copies of them even to natives who are anxious to procure them.

A petty pride in exclusive knowledge also may lead these persons to follow the authority of works possessed only by themselves, in preference to those open to the whole community, and to this perhaps it may be attributed that a deviation from the three abovementioned standard works is observable in some of the Vyuvusthas. In one instance the Sudur Udalut Shastree admitted that Purisishthu was the authority for the exposition, but as he alone possessed the work, there is no knowing yet how far it was true in other cases.

Some inconsistencies in the Vyuvusthas have been pointed out in the notes, and others of less consequence have been passed over without notice, but it cannot fail to be remarked that most of them appear at first sight rather opinions on the Case worked up with the Shastree's own views of Equity and customs, than direct expositions of the law bearing upon it. Very seldom are the passages upon which the opinion is given pointed out, and it seems to have been generally considered sufficient to declare, that one or more of the three Books abovementioned afforded the warrant for the particular Vyuvustha, without any reference to the place where it was to be found, much less any quotation of the passage itself. This consideration has led to the notes pointing out passages from Law Books as illustrations of the Vyuvusthas.

vusthas, and their utility it is hoped will form a sufficient apology for such an unusual innovation upon the customary plan of Reports. Their fidelity is guaranteed by the fact, that every one of them has been selected by a Pundit, verified however by as careful a reference both to the originals and to the English translations of such Hindoo Law Books as were procurable, Mr. Colebrooke's Digest, his translation of the Dayu Vibhagu of the Mitakshura, and Sir William Jones's Munoo. Neither these quotations however, nor the few general observations which have been hazarded, are presumed to be of authority in their respective cases, and the chief advantage hoped for from them is that they will elicit a spirit of enquiry and observation on a subject, which seems to have been hitherto left to a certain body of men under an impression, that whatever they said was true; or, if a suspicion of the contrary existed, that it could not be noticed on account of the responsibility of those persons; under such a system, responsibility would become so general, as to be none at all. As a general and copious Index accompanies the Reports, it is hoped that the length of the Cases, which may still be objected to, will not prove a material obstacle to their being easily referred to.

H. BORRADAILE,

SURAT, 15TH DECEMBER 1824.

ADDITIONS AND CORRECTIONS

TO VOLUME I.

CX.d.4

Page.	Line.	
	Marginal	
	Note.	
1		For *not* read *nor*.
7	19	For *antidated* read *antedated*.
—	Note.	For Decree *3d February* read *3d July*.
9	5	For *who* read *whom*.
10	22	For *Appt.* read *Appellant*.
11	15	At loss of *the* character, dele *the*.
14	17	For *agreeable* read *agreeably*.
16	Note.	When the preface was sent to Press, it was intended to strike out the note to this case, but it had been already printed off in all the Copies.—N. B. Many of the Native names throughout the work are misspelt; often by the Printer's mistaking the letter u for ee; thus Shastree (the person) is sometimes put for Shastru, (the law), and Yagnyuwulkyee for Yagnyuwulkyu &c.
18	Note 2d	After Paternal and Maternal Uncle, read, "and such near "Kinsmen (Sukoolyu);" and for *unblemished* read, *of sound mind*.
34	Last but one.	For *referrable* read *referible*.
35	Heading of No. 9.	For *Oawal* read *Ooswal*.
35	Last but one.	For *alledged* read *alleged*.
36	4	For *been* read *being*.
39	15	Read, expressed *their* conviction.
46	12	Read, come upon *the* insurers.
47	11	For *certifiate* read *certificate*.
—	17	For *are* read *is*.
48	11	Read *The* Judges of the Sudur Udalut.
49	Note. Last line but one.	For *forgoing* read *forging*.
55	Marginal note.	Read, "All the Courts agreed in Dis*allowing*.
58	18	For *Respondent* read *Respondent's*.
—	Note.	This has been discovered to be a partial quotation from an imperfect Copy, but is quite in the spirit of the Author. Vide Note (1) to No. 15.
59	Marginal note.	Defence *that*.
63	Do. Do.	For *Provisional* read *Provincial*.
61	11	For *friend* read *friends*.
62	9	For *recompence* read *recompense*.
—	13	Read, *to Nundee*.
64	Note.	At note (6) Consult note (1) to Case No. 51.
68	15—16	For *expences* read *expenses*.
70	Note (2) line 5.	For *Repondents* read *Respondents*.
70	Note 3 last line but one.	For 325 read 326.
72	8	Read, Respondent *Sheo*.
—	Note (1)	Read, "died *separate* without male issue."
74	Note.	For *perference* read *preference*.
77	21	For *Nursioon* read *Nursing*.
78	Note 2	Read, Munoo also Ch. 9 *v.* 201*st*.
81	Marginal note line 16.	For *decisi-* read *decision*.
83	Line last.	For *Fres* read *fees*.
85	Marginal note line 44.	Read, agreeably to *the*.
91	Marginal note line last but one.	For *tho* read *the*.
95	Last line but two.	For *Roostumjee* read *Ruttunjee*.
95	Note.	For *new* surety read *now* surety.

Page.	Line.	
96	2d	For *it* read *them.*
—	Note, line 4.	Dele (payment by the principal be)
102	Last but two.	For *Respondents* read *Appellants.*
104	Marginal note.	For *no* read *on.*
106	Note 3 line 2d.	Dele *of a father.*
108	No. 26.	Read *Respondents* and *Appellants.*
109	9	For *three* Setheeas read *ten* Setheeas.
	Case No. 27.	For *Wugf* read *Wuqf* throughout.
115	Last line.	For (Muyookh ?) substitute *Custom of the Country.*
115	Note 1.	Vide No. 43 of the Court of Appeal Cases.
—	Note 2.	For *Note* (4) read *note* (5.)
120	17	For *seperate* read *separate.*
121	15	Read, This Suit was filed *by Appellant.*
124	Last but one.	For *on* read *in.*
136	12 13 14	Read as follows: " produced a letter *to* Respondent's brother Bhugwandas Bhookundas at Broach, *from* Huree Bhaee, at Surat, who was his partner, in which *the latter directs him.*"
—	Last line.	Read, *to* Respondent's Brother.
139	7	For *Appellant* read *Appellants*, and for brother, *brothers.*
140	6	For *numbers* read *members.*
	Last but one.	For *Appellant* read *Appellants.*
141	Note.	Read, *Note* (7) to Report No. 14.
145	3	For *expences* read *expenses.*
—	12	For *of* read *to.*
150	10	Read, if such *marriage* had taken place.
155	14 15	Read, a quotation *was* given.
157	23	Read, interests *were* perfectly separate.
—	Note.	Read, Cole. Mit. 326. vide note (3) to No. 15.
159	3	For *expences* read *expenses.*
160	23	Read, *among brothers.*
163	Last but one.	For *Fund* read *Funds.*
164	21	Read, widow *of* Hurjee Bhaee.
165	20	For 110 Dollars read 100 Dollars.
171	26	For *imperpectly* read *imperfectly.*
184	Line 2	Read *Sreejee Dwar.*
188	Last line but three.	For *Mihtabkaee* read *Mihtab Race.*
190	Note 2	Add, Cole. Digest 3rd, 242, Cole. Mit. Note to page 368.
192	12	For *eighth* read *ninth.*
193	Note 3	Substitute the following: A literal quotation of the passage is given in the Vyuvustha of the Zilla Shastrees in Surat Case No. 86.
193	Note 4 line 9	For *Analizes* read *analyzes.*
195	Note 8	Add, Cole. Mit. page 310 in the note and."
196	10	For *contitute* read *constitute.*
197	Note 12 line 2	Read, their sons protect *them* in age.
207	No. 46	Read, *Appellants* filed the suit.
208	9	For *Brother* read *Brothers.*
—	27	For *Appellant* read *Appellants.*
211	Note 1 line 4	For *certainly* read *certainty.*
—	Do. line 9	For *practise* read *practice.*
215	3	For *This* read *The.*
217	4	For *Crews* read *Crew.*
218	14	For *here* read *there.*
—	28	For *nto* read *not.*
223	16	For *prime Costs* read *prime cost.*
225	22	For *Appellant's* read *Appellants'.*
227	Last but one.	For *Appellant's* read *Appellants'.*
228	17	For (*Appellant*) read (*Nowshirwanjee.*)
232	10	For *persons* read *person.*
234	30	For on *to Vhauwchers* read on *what Vouchers.*
240	Last but two.	For Appellant's read Appellants.

Page	Line.	
242	7	For *propertly* read *property*.
243	5	For *to do so* read *to decide it*.
243	18	For *this* read *these*.
246	15 16	Read only, "The Lower Courts' decisions were affirmed with Costs."
247	Marginal note line 6	Read, overlooking.
247	8	For *but* a stop to, read *put* a stop to.
248	13	For Jumadee oos *Lance* read Jumadee oos Sance.
251	3	For *decison* read *decision*.
259	1	For *(No. 24)* read *(No. 36.)*
265	Marginal note line 20	For *an* Appeal read *on* Appeal.
266	Marginal note line 32	For *conclusive* read *collusive*.
Do.	line 40	For *mortgage* read *mortgager*.
269	Note 1	For *amending* read *amended*.
275	12	For *mookummud* read *moohummud*.
277	26	For *ocupancy* read *occupancy*.
279	16	For *hand* read *hands*.
287	18	Read, Appellant *(Umrut)* also stated.
288	18	Read, "*with a reservation* of his share."
290	12	Read agreement *or* Ikhtiyarnamu.
298	Last but five	For "*himself* and Dhoollubh" read *Appellant* and Dhoollubh.
301	7	For *Provisional* read *Provincial*.
—	Marginal note line 11	For against *her* read "against *her*."
303	11	For 1790 read 1798.
Do.	Note 1	After destroyed (in the fourth line) read as follows: Cole. Dig. 1st. 183. Fourteen days' grace are mentioned a little lower in the same page line 11th Bruhusputi: "Gold being "doubled, and the stipulated period having expired the "creditor becomes owner of the pledge after the lapse of "fourteen days, but within that time the debtor has a right "to redeem it on paying the money due on it." Cole. Digest 1st. 186. There is no extension of the Rule to any thing besides Gold.
306	Two last lines.	For 1229 *or A. D.* 1814 read 1219 *or A. D.* 1804.
312	9	Read, striking *a* balance.
317		For *Appellants* read *Appellant*.
319	29	For *Respondent* read *Respondents*.
320	Last but four.	For Judge read *the* Judge.
321	28	For *Gentlemen* read *Gentleman*.
322	19	For *this* read *his*.
323	18	For *Realms* read *Realm*.
325	Last but two.	For *greatly* read *greatly*.
326	10	Read, afterwards affirmed *in the above* No. 64.
331	31	Read, he rested *on* the words.

COURT OF APPEAL CASES.

346	Last but six.	For *owners* read *owner*.
349	23	For Appellant's *brother's* read Appellant's *Cousin's*.
353	Last but one.	For *absence* read *absense*.
354	No 5	For *Respondents* read *Respondent*.
355	Last but one	For *his* read *Appellant's*.
357	Last but two.	For *he* Court read *the* Court.
358	6	Read, the hands of *the* Shastrees.
360	Note.	Add, Cole. Digest 2d 425.
362	4	For *Hummudee* read *Hummadee*.
,,	12	For *Judical* read *Judicial*.
363	20	For *wtth* read *with*.
372	No. 15	For *wido* read *widow*.

Page.	Line.	
373	27	Read, "with certain provisions," *if not* contrary.
377	14	For *Brahmuns* read *Brahmunees*.
381	Note.	For No. 42 read No. 43.
386	24	For the *Kishi* read the *Rishi*.
391	Last but five.	For *ackowledgment* read *acknowledgment*.
396	25	Read, the provisions of *the* Dhurm Putr.
401	3	Read, that *since* its former Decree.
——	No. 31	Read, Phoolchund *Soorchund*.
409	10	For *Collecter* read *Collector*.
415	2	Read, her *husband's* stepmother.
419	Note.	Add, The rite of marriage is the last of the initiatory ceremonies required for a man (Cole. Digest 3d 104, note) as it is the first and only one for a woman.
422	12	Read, belonged *to* them.
424	Note.	Read, No. 18.
432	Last but four.	Refer to note (1) to Bombay Case 15, after "competent Donees."
433	Last but 11.	Read, the Kumavisdar *under whose Jurisdiction* Juniyadra *was then* situated.
436	18	Read, *whose* possessions.

N°. 1.

NAWEE BUHOO, Widow, ... } *of Veerjee*
and } *Bomanjee* } *Appellants.*
SHAPOOR, adopted Son, ... } *deceased.*

VERSUS

PESHTUNJEE LOOLA BHAEE, ... }
styling himself } *Respondent.*
PESHTUNJEE VEERJEE, ... }

Surat Udalut.

A. Ramsay, *Judge.*

Decree 10th Feb. 1801.

Dispute between two Parsees for the Estate of their relation and common adopted Father, each claiming to succeed to it under a will of the deceased, that held by the Plaintiff (Respondent) being signed by the deceased but not witnessed; and that held by Appellant being neither signed not witnessed. The signed will determined to be the true one, under the Rules of the Parsees, and declared by the Courts to give to Respondent a preferable title to the Estate, notwithstanding performance by Appellant and not by Respondent of certain religious ceremonies in honor of the deceased.

THIS was a case of contested inheritance arising out of two Wills, by and in the name of Veerjee Bomanjee Parsee, deceased, by him previous to his death, delivered to his second Wife, Manuck Baee, with orders to keep them secret for 2 Months after his death, to prevent disputes.—Respondent filed the Suit in the Zilla Court on the 20th October 1800 to succeed Veerjee under the first Will, dated Jesht (Ashad) Sood 2d Anno Sumvut 1856, or 24th June 1800, made and signed by Veerjee in his favor, but not witnessed, constituting Respondent Peshtunjee, his Son, and heir to the residue of all his property, after payment of certain legacies specified therein. Appellants denied the validity of the Will exhibited by Respondent, and produced the other, dated Friday 5th Ashad Vud Anno Sumvut 1856, or 11th July 1800, which was in favor of Shapoor, calling him " my Nephew Bhaee Shapoorjee my Son-in-law, he shall be my Son, and must write his name Shapoorjee Veerjeebhaee." This Will was neither signed nor witnessed, though admitted by Respondent to have been drawn out by Veerjee's directions.

The Judge took evidence which went satisfactorily to prove beyond a doubt, that the signature to the first Will in Respondent's favour was that of Veerjee, and the dispute respecting the comparative validity of the two Wills on this point was set at rest, as Kaoosjee Dustoor, Dosabhaee Modee, and other persons of the

Parsee

Parsee cast declared, " that a Will not witnessed, but the sig-
" nature to which is proved by comparison with other hand-
" writing of the Testator, must be upheld in preference to an
" unsigned one." Appellants then adduced the following points to bar Respondent's claim; " 1st, The act of adoption of Appel-
" lant Shapoor by Veerjee before credible witnesses. 2d, The
" invalidity of Respondent's adoption, otherwise not denied by
" Appellants, as performed without the requisite consent of
" Veerjee's Wife, Appellant Nawee Buhoo, and without seating
" Respondent, as usual and proper, on Veerjee's lap. 3d, Non-
" performance by him, and performance by Shapoor, of cer-
" tain Funeral rites, and particularly of the Wootumna on
" the 3d day after death, which a real or adopted son alone
" can perform." Respondent in reply declared that his own adoption was regularly performed, but allowed that he permitted Shapoor to perform the Wootumna, at the earnest entreaty of Shapoor's Father Meerwan and Uncle Roostum, who swore at his feet that it should not affect his title by the Will. He quoted two other points of Parsee Law (1) in opposition to those brought forward by Appellant viz. " That the Wootumna may be
" performed by any relation without prejudice to the right of
" the Heir; and that an only son cannot be adopted by ano-
" ther person; consequently that Shapoor, the only son of Meer-
" wan, was not legally adopted by Veerjee." Respondent acknowledged, That the second Will was drawn out in Shapoor's favor, but never executed, as Veerjee made repeated and

(1) In this and other Parsee Cases the word "Laws" is applied to the points laid down by the Modee, High Priests, and other Members of the Parsee Persuasion. They have in fact no Laws, for such Books as they had before they emigrated from Persia, were at that time all lost, and the Rules which by their Engagement with the Hindoo Chief of Sunjun they bound themselves to obey, form, together with the Customs of the Country which they insensibly picked up in their intercourse with the people, a body of Rules, or common law differing in few respects from that Custom of the Country founded on Hindoo Law, which regulates the whole of a Hindoo's life. Even in matters connected with the Hindoo religion, as Adoption, Contract of Marriage, &c. the ceremonies of the Hindoos are nearly the same as those performed by the Parsees; indeed in little else but their Faith will they be found to differ materially from Hindoos, and they may safely be pronounced to have no "Law."

and anxious attempts to persuade Meerwan (who steadily refused) to permit the adoption of his son Shapoor, the son of Veerjee's favorite daughter, but on Meerwan making an oath not to allow it, because, as Respondent said, by their law Shapoor would thereby lose all title to the estate of his real Father, a far richer man than Veerjee, Veerjee adopted him Respondent Pesthun, and executed the first Will in his favor. The Court ascertained from the evidence of Dosabhaee Modee, and several other Parsees, That a Wife's consent is not necessary to render an adoption legal (as asserted by Appellant Nawee Buhoo) though if obtained it would be better. "That seating the person to be adopted in the lap of the adoptor " is not necessary to complete the adoption, which is equal- " ly legal if the parties call each other by the names of Father " and Son." That any person may stand up and perform the Wootumna without prejudice to the title of the heir, and that a person who has adopted one son, may renounce him and adopt another. Appellants on this produced the written opinions of the Priests of Oodeepoor and Nowsaree, and Extracts from their Books of Law, which went to prove, " That a person cannot " enter Heaven, cross the Bridge of Chunwud, unless he leave " a son, real or adopted, behind him. That to oppose or inter- " fere with the rights of an adopted son is consequently a hein- " ous sin, and the person committing it may be put to death " without fear of the Laws."—" That the person by whom, and " in whose name the Wootumna is performed on the 3rd day " after death, is the true and legal heir, and the Wootumna " having been performed in Shapoor's name at Oodeepor and " Nowsaree the opposing him would be a great sin, whilst his " title could not be set aside." Respondent again produced a Mehuzur or Certificate from all the principal Parsees of Bombay to those at Surat declaring Peshtunjee the real, and legally adopted son, and upholding the validity of the signed Will. Witnesses on both sides proved the adoption both of Respondent, and of Appellant, Shapoor, but the Judge called Kaoosjee Dustoor,

oor, the high priest, who stated that by the Parsee Law a man cannot give up his only son for adoption by another, who also cannot receive him for that purpose. He afterwards, however, admitted that he could not find this opinion in their Books, or written Law. The Judge decided in favor of Respondent, the Heir named in the first will, because, the signature to it had been sworn to, and the Will declared legal on that account by the Parsee law. Because by the same law, an only son, as Appellant Shapoor, can neither be given away nor received in adoption, and because the Mehuzur of Bombay Parsees, and the evidence of Modee Dosa-Bhaee and others, declared the Will, bearing Veerjee's signature, the proper Deed to be confirmed; and as Veerjee did not by any document under his signature actually adopt Shapoor, the setting aside the first Will on any other grounds would open a door to dispute.

Sudur Udalut.
Jon. Duncan, *Prest.*
J. H. Cherry.
T. Lechmere.

On an appeal being preferred by the former Defendants to the Suder Udalut, that Court ordered further and more explicit evidence to be obtained on all the foregoing points, on a supposition that the real object of a Will is to enable a testator to dispose of his own property agreeably to his own last wishes, and observing that Veerjee's constant and last wish was to have Shapoor for his son, and heir.

The lower Court was also to ascertain from the drawers of the two Wills, what they knew of Veerjee's real wishes and intentions, and whether the unsigned Will was drawn out by Veerjee's directions; why not signed, and the exact time when both were written. 2d. Whether a Son, on being adopted, lost all claim to the property of his real Father? at what time Veerjee gave Meerwan notice, as asserted by Respondent, of his having adopted Respondent? The real intention of Veerjee in enjoining Manuck-Bhaee to keep the Will secret, and to make her state explicitly to which he alluded, when he gave them both to her.

The Court, on obtaining this additional evidence, which was not

not more explicit on any of the points referred, (except the testimony of Manuk-Bhaee, who proved that it was the first Will to which Veerjee alluded, as the one to be kept secret, when he gave them to her,) decided that the first Will was certainly executed by Veerjee, though not attested, in favor of Respondent, was delivered by Veerjee into the custody of Respondent's Step-Mother Manuk-Baee, and was an authentic and valid document. That the second Will was also prepared by Veerjee's directions, but did not testify his mind or intention, as this intention could have been put in execution by signing the Will, which Veerjee did not do, and could not have made up his mind thereby to annul the former Deed, which Deed or Will, without a subsequent one annulling it, must therefore remain valid. That it was as yet undecided, even by the Parsee Cast (who were divided in opinion upon this point) whether adoption of, and performance of the Funeral ceremonies by, one person, can annul the validity of a testamentary writing signed by the Testator in favor of another: That whilst Kaoosjee Dustoor declared an only son could not be adopted, several precedents to the contrary had been shewn.

That the cast was also divided in opinion, whether an adopted Son loses all title to the inheritance of his real Father, or not; and whether the adoption of one son, did or did not preclude the adoption of another (in his stead), those who maintained the negative allowing that the performance of the Wootumna by the first would make him heir de jure. (2) The Court observed also, that Respondent's consent having been asked to allow Appellant Shapoor to perform the Wootumna, which was proved, was an acknowledgment by Appellant of Respondent's right to inherit. That this acknowledgment quite outweighed the actual performance of the Wootumna by Appellant, which did not, after all, appear to have much real weight in opposition to a Will supported

(2) But in this case Respondent Peshtunjee was first adopted.

Decree, 15th Dec. 1802.

supported by an adoption. The Decree of the lower Court in favor of Respondent was therefore affirmed.

N°. 2.

GUNGESHWUR DEORAM.....Appellant.

VERSUS

PURMANUND NUNDRAM.....Respondent.

Surat Udalut.

Claim by a Hindoo to the Family Estate, as legal Heir of his Elder Brother deceased, by the latter willed away to a Grandson by his daughter. Claim dismissed in both Courts, as not cognizable under Section 15th Regulation I. of A. D. 1800. in consequence of a former decision by the Nuwab of Surat.

THIS suit was filed by Appellant in the Surat Udalut on the 18th May 1800, to set aside a Will, or Deed of inheritance made by his elder Brother Jugguneshwur in favor of his Grandson, by his daughter, the wife of Respondent, to the prejudice of Appellant, his Brother and lawful heir. Under this Will, Respondent had obtained possession of a house and property, which should have come into possession of Appellant himself, as descending from his Ancestor, and he sued to have the Will set aside, and the property restored to him. He admitted, that Farighkhuts had been formerly exchanged between his Brother and himself, but pleaded that no separation of goods had taken place thereupon, and that his Brother afterwards, by another paper, annulled the former Farighkhuts.

Respondent urged that separation of goods and interests actually took place between Appellant and Jugguneshwur, and that the latter's Will in favor of his, Respondent's, son was therefore perfectly valid.

The Court was about to refer the case to Arbitration by desire of Appellant, when Respondent exhibited a Hookm Namu, or Decree, passed in this matter by the Nuwab of Surat Meer Nuseerood Deen Khan, in favor of himself and son, on the 14th Shuwal 1214 Hijree, being 6 Months and 20 days prior to the hearing of the suit, and before the Sovereignty of Surat was vested in the Company.

The

The Court thought this Decree must stand good as a final decision of the case, agreeably to the provisions of the 15th Section of Regulation 1st of 1800, by which "The Judge's Court is "prohibited entertaining any cause, which from the production, "on the records of the Court, of a former Decree, shall appear "to have been heard and determined by any former Judge, or "person or persons having competent jurisdiction," but observing that the signatures of the Qazee and Mooftees were not affixed to the Hookm Namu as customary, a reference was made to the Nuwab through Daniel Seton Esquire, the Lieutenant Governor, by whose answer the authenticity of the Decree, as passed by the Nuwab, was ascertained, and the fact that the signatures of the Law Officers were not invariably affixed, was established.

The suit was therefore at once dismissed, under the Regulation above quoted, without further proceedings, or investigation of proofs on either side.

A Ramsay, *Judge.* Decree, 7th Feb. 1801.

Appellant then appealed to the Sudur Udalut on the ground that the Nuwab's Decree, on which his suit in the Zilla Court had been dismissed, was lately made, and antidated, and false. The Sudur Udalut held, that no other process than what had been had in the lower Court was necessary; that the proceedings of the lower Court satisfactorily proved that this case had been decided on by the Nuwab, before passing of the Treaty which transferred Surat to the Company, and the Sudur Udalut therefore decreed, that the Judgment of the lower Court should be fully affirmed, as founded on a clear and explicit Rule, viz: Section 15th of Regulation 1 of 1800.

Sudur Udalut

Jon. Duncan, *Pres.* T. Carnac, W. Page. Decree, 3d Feb. 1801.

N°. 3.

NUTHOO BHAEE PRANWULLUBH.....Appellant.

VERSUS.

LALDAS JUGDEESH.....Respondent.

Surat Udalut. Nathan Crow, *Judge.* Decree, 23d April 1806. Suit filed to compel performance of the terms of a Conditional Deed of Sale of a House, by delivering up the house to Appellant, the holder of the Deed passed to him by Respondent. Prior assignment by the Respt's father of the house in question to his own wife, for the sacrifice of her Dower Jewels to relieve his wants, pleaded in bar of the claim under the Deed in Appellant's possession. The Courts of Appeal and Sudur Udalut declared the Conditional Deed of Sale of the House, at the time belonging to the widow, executed by her Step-son Respondent to Appellant, illegal; the house directed to be restored by him to Respondent, on receipt of the sums advanced by him on the original Mortgage.

APPELLANT filed this suit in the Surat Court to oblige Respondent to fulfil the conditions of a Satekhut or Contract of sale, by delivering up to him a House thereby made over to him, part of the purchase money for it having been paid, and Appellant being ready to pay the remainder. He set forth that Respondent Laldas Jugdeesh Moarfuteah mortgaged the two upper rooms of the said House to himself, who still inhabited them for Rupees 3,001, in A. D. 1768, and in 1774 executed this contract for the sale of the whole House to him, on his making up the sum to Rupees 5,701. It was signed by Respondent and by one Ruseek, a Broker, through whose means it was effected. Respondent, in part of the further payment, received from him first Rupees 425, for which he gave a receipt; then Rupees 256,,1,,69. on a promissory note bearing interest; Rupees 50 more upon a note; and Rupees 10 without a receipt. He, notwithstanding, retained possession of the House, from which Appellant sued to eject him under the conditions of the Satekhut. Respondent in answer said he was willing to deliver up the House to Appellant if he, from his Samee Dustkhut Book, could shew any payments made "on account of the Sale;" and he also in defence exhibited the following papers, 1st, a Tumleek Namu, or Deed of assignment and possession, passed by his Father Jugdeesh Shah, Deendoo Banyan, son of Kuhandas, son of Hurec, to his wife Motee. It set forth that the assigner having been obliged to sell the Jewels of his Wife Motee to the value of Rupees 1,500 for relief of his wants, and to mortgage the House and premises (in dispute) for Rupees 3,001, to Joitah son of Duyal, proposed that his Wife Motee should

should pay to Joitah Duyal (father of Appellant) the above sum due him, which she, Motee, had agreed to do. The assigner therefore made over the said property, (which he obtained, partly by purchase, and partly by inheritance, from his father Kuhandas), to the said Assignee Motee, who, in consequence of her having subscribed to the above assignment on these conditions, he engaged to ensure against all trouble or litigation whatever respecting the house.

2d. An affidavit made before certain Mooftees by Motee, the Assignee, setting forth the passing of the above Deed by her husband, and admitting the mortgage of the upper part of the House to Joitah Duyal, and the existence of debts to the amount of Rupees 13,000 due by her Husband to other Creditors prior to the Deed. She said that Joitah Duyal by imprisonment and harsh treatment obliged Respondent Laldas, after Jugdeesh's death, to execute the Satekhut for the sale of the whole House, and afterwards prepared another for deponent to sign, but that this second Satekhut was not signed by her, neither had she received any Beeanu, or earnest money, nor was the price inserted in the body of it; moreover, Joitee the Wife, and Appellant Nuthoo the son, of Joitah, lately came to Deponent, and, in presence of a woman named Keshur Baee, offered to receive the sum due on the mortgage, and give back the house. Deponent in her affidavit accordingly proposed that Laldas should repay Rupees 3,001 due on the mortgage, and receive back the house.

3d. The Riwayut, or opinion of the Mooftees upon the dispute, in which, after summing up the evidence, they stated that if Motee had accepted any thing, as asserted, in lieu of her prior right to the House under the Tumleek Namu, her right was null and void, but that if this were not proved, and if, on the contrary, it turned out, as asserted by her, that Appellant had offered to give up the House on receipt of what his Father Joitah had advanced on the mortgage, and of the after payment

of

of Rupees 425, then the Satekhut on which he claimed possession must be declared null and void. The Surat Court referred the case with these Papers to a Punchayut, and on its failing, to another, the majority of which decided in favor of Appellant, and of the validity of the Satekhut to give him possession, and the Judge confirmed their award, by giving Appellant possession of the House.

Court of Appeal, Sitting at Broach.
T. A. Grant, *Chief Judge*.
T. Smith 3d do.

Respondent appealed to the Provincial Court, on the ground of partiality in the Umpire of the Punchayut, on whose award the lower Court had given a decision against him. The Court satisfied itself that there were sufficient grounds for entering into the case, not from proved partiality in the Umpire, but from want of a clear and explicit assent by Respondent to the second arbitration, and suspicion of partiality, as expressed by the Judge of the lower Court in his civil Proceedings.

On going into the merits of the case they found, that the Satekhut had been obtained from Respondent by Appellant by undue influence in 1831 (A. D. 1774-5), at which time Respondent was not entitled to make the transfer, because the House then actually stood assigned to his Step-mother Motee, whose title it was proved Respondent wished to purchase from her thirteen years after its assignment to Appt. under the Satekhut. That the Rupees 425, since paid by Appellant's Father, were entered in his Samee Dustkhut Book merely " on account of the house," without specifying whether for the sale or mortgage. That the note bearing interest for Rupees 256 1 59 was proved, by report of the minority of the Punchayut, not to be in the hand-writing, and to bear a date subsequent to the death, of the supposed writer, Jugdeesh, and was consequently false. Thereupon the Court set aside the decree of the lower Court, founded on the award of the Majority of the Punchayut, and passed another ordering Appellant to give up the house to Respondent on receipt from him of the original sum advanced on the mortgage, and of the money since paid, total Rupees 3,546.

Decree, 6th Aug. 1806.

On

On Appellant instituting an Appeal in the Sudur Udalut, that Court resolved to affirm the Decree of the Court of Appeal, because it had been clearly proved that Respondent had no title at the time of passing the Satekhut to sell the house, which then, and for 13 years afterwards, belonged to his Mother Motee; and there being no proof by Appellant that the sums since advanced were for the bonâ fide purchase of the House, it was just to infer that they were further advances, on mortgage of property in Appellant's hands fully equal in value to much more than all he had advanced.

Sudur Udalut.
Jon. Duncan *Pres.*
T. Lechmere.
R. Rickards.
Decree of Provincial Courtaffirmed 20th May 1808.

The Decree of the Court of Appeal was therefore affirmed, each party bearing his own costs.

N°. 4.

DHURMCHUND ABEELA AND *SONS*, *MOOLCHUND* AND *GOOLABCHUND*, } *APPELLANTS.*

VERSUS

NANA-BHAEE GOOLALCHUND, ...RESPONDENT.

THIS suit was laid by Respondent in the Zilla Court on the 29th December 1807, to recover Rupees 1,183, as damages for loss of the character caused by Appellants. Respondent said that Dhurmchund having, about 5 or 6 years before the cause of action arose, been appointed to superintend the annual Feast of Chundr Prubhoo, a Deity whose pagoda was in the neighbourhood of Respondent's house, it was Appellant's duty to send round invitations to all the members of the Cast to which the parties belong, to attend the Feast, held annually at the said pagoda to commemorate the Birth of the Deity, the expenses of such Feast being defrayed by subscriptions to be collected by Appellant from the members of the Cast, each contributing according to his means. Dhurmchund being in confinement at the time, in "execution

Surat Udalut.
S. Bourchier. *Asst. Judge*

Cast of Sravuk Beesa Ooswal Bunyuns.

Claim by Respondent as Plff. to recover damages from Appellants for having wilfully and maliciously caused the loss of his character, by omitting to invite him to a solemn Feast of the Cast. Caseproved, and damages awarded as sued for, a-

gainst Goolabchund, as the most active of the Appellants by the Zilla Court, and upheld by the Courts of Appeal and Sudur Udalut.

" execution of a Decree against him in favor of one Hurkoo " Motee for Rupees 1,000 for loss of Cast, out of which he " was turned by Appellant Dhurmchund and others;" and which cause was advocated by Respondent against the latter party, his two sons, the other Appellants, had superintendance of the Feast held on the Birth day of the said Chundr Prubhoo, on or about four days before filing the suit, but had studiously caused the invitation to him to be omitted, whereby his reputation had been materially injured and a great slur cast upon it by Appellants, such as the expending of Rupees 1,000 would hardly wipe away, and he therefore sued to have his character cleared up by a statement of the reasons of Appellants omitting to invite him to the Feast.

Appellants answered, that Dhurmchund being in confinement, they, Moolchund and Goolabchund, had presided on the Feast of Chundr Prubhoo. That the Cast were not invited individually but as many as were living together, whether 40 or 50, at once, and these contributed in a body their share of the Feast. That Respondent every year regularly attended the Feast, but not being on good terms with him, they had not invited him now, and the Pagoda being the House of God, no invitation was necessary to it, and they had no wish to be invited by Respondent, either to his house, or to the Pagoda. Appellants also required that Respondent be made accountable for injury to their characters, by having demanded security for their appearance. The only witness called in the case was by Respondent to substantiate his claim to damages. Bhugtee Gopaldas, servant in the Temple of Chundr Prubhoo, deposed, that during the 15 years he had held the Office of Bhugtee, he had each year levied something from Respondent, and invited him to the Feast of Chundr Prubhoo, but that on the last Feast, he had neither invited Respondent to it, nor levied any thing from him, having been forbidden so to do, by Appellant Goolabchund. Deponent stated, having heard of a quarrel between Respondent and Appellant Goolabchund, respecting a Drain near their

Houses

Houses (which in the Civil Register were stated to be contiguous), and which he understood to be the reason of the said Order by Appellant, Goolabchund, whom, as Peshwa, or President, Deponent conceived himself bound to obey.

The Assistant Judge found that Appellant Goolabchund had, from motives of malice and revenge, caused Respondent to be excluded from the Feast; that this exclusion by the said Appellant, whose father Dhurmchund was one of the Peshwas of the Temple, was oppressive and unwarrantable; that Respondent's reputation had been seriously injured, and his bread, which depended on his good name, endangered; and that the respectability of his character entitled him to every support; decreed, therefore, that Appellant Goolabchund pay Respondent Rupees 1,000 in ten days, with costs of suit. Appellants acknowledging the fact of expulsion from the Cast, of Respondent by their means, on account of private animosity, the Court thought it only remained to enquire whether the amount of damages decreed in the lower Court were excessive; when the Judges came unanimously to the opinion, that Appellants had been moved to injure Respondent by reason of his having, as Wukeel in the Udalut at Surat, advocated the cause of Hurukchund Moteechund, who obtained damages in the Surat Court under decrees, since affirmed in Appeal, against Appellants and others, who had expelled him from his Cast for a crime of which he had been acquitted by the late Court of Session at Surat. That Appellants had attempted to intimidate Respondent whilst exercising the Office of a Pleader, and Respondent having the protection of a public character, it was necessary to extend support on general grounds to such persons. The Court thereupon affirmed the Decree of the Assistant Judge with Costs by Appellants.

Decree 2d March 1809. Court of Appeal (sitting at Broach.)

T. A. Grant *Chief Judge*, J. Smith 2d do. Decree 23d Sept. 1808.

The Sudur Udalut, before whom the case was carried by Appellants, was of opinion, that the decrees of the Zilla and Provincial Courts must be affirmed, but with an injunction to those Courts, that in future the amount of damages incurred

Sudur Udalut.

Jon. Duncan, *Prest.* Thos. Lechmere R. Rickards Decree 9th March 1809.

red by loss of Cast should be fully and clearly proved, and no more than the actual damages incurred be decreed to the Plaintiff.

N°. 5.

NUNDLAL BHUGWANDAS,.....*Appellant.*

VERSUS

TAPEEDAS and PRUBHOODAS SONS of RUGHOONATHDAS ..... } *Respondents.*

Surat Udalut.

Claim laid by Appellant to recover damages for, and to enforce performance of, a broken Marriage contract, executed between his own Father, and one of the Respondents, for the Marriage of Appellant's son with a Girl, named Goolab, the niece of the above Respondent and daughter of the other, both Respondents now refusing to fulfil the contract.

Suit disallowed, on the grounds that a Marriage Contract, to be valid, must both by the Rules of Cast, and Laws of the Shastr, be made with consent of Parents on both sides, whereas the Contract in dispute did not receive the sanction of Respondent, the Girl's father, and was consequently void.

APPELLANT claimed from Respondents the sum of Rupees 1,183 as damages for breach of a Mungnee or Betrothing of the daughter of Tapeedas to Appellant's son, Respondents refusing to allow the celebration of the Marriage consequent upon the Mungnee between them.

Appellant, in his Petition filed in the Zilla Court, 10th January 1808, set forth, that about a year before filing the suit, in the month of Magh A. S. 1863 (or February 1807,) his son Tapeedas was betrothed to *Goolab the daughter of Respondent Tapeedas Rughoonathdas, by Respondent Prubhoodas Nana-Bhaee, her Uncle*, and by Gokool Bhaee Hurree Bhaee, at the house of *Respondent, Prubhoodas Nana-Bhaee*, in the presence of *Appellant's father* Bhugwandas Bindrabindas, who gave to *the Uncle* 5 Rupees as earnest money agreeable to the Rules of the Cast, to the Members of which then present he also presented Jagree in due form. That the Mungnee, or Deed of betrothing, was drawn out in the name of *her Grandfather Rughoonathdas Bhugwandas*, to have effect in two Months, by *Respondent her Uncle*, and signed by *Appellant's Father*. *Prubhoodas her Uncle* at the same time settled, that out of the Dower agreed upon Rupees 440 should be appropriated for ornaments and Rupees 100 for clothes, &c. Appellant said

said that about 3 months after executing the above contract, Golab's Grandfather Rughoonathdas gave him warning that *Tapeedas her Father* was about to break off the match, and although a meeting of the Cast, had since decided that the contract must be fulfilled, yet Respondents, the Girl's *Father* and *Uncle*, were about to break it, and marry her to another person. He therefore prayed for an injunction to stop their further proceedings, and for a Rule to cause the celebration of her marriage with his Son.

Respondent Tapeedas for himself answered, that he knew nothing of Appellant's claim except that in the month of Phalgoon last past, (March 1807) Prubhoodas had asked his consent to the marriage in dispute, which he, Respondent, then refused, and was perfectly ignorant of any thing else which had been done in the business.

Respondent Prubhoodas stated the circumstance, to have happened not in Magh, but in Phalgoon, and then proceeded to say that on Appellant giving him, late one night, the Contract and 5 Rupees, and requesting he would use his good Offices to bring about the Marriage, he replied that *not being the Father of the Girl, he had not authority* to settle any thing of the kind, but would go as from him, Appellant, to obtain *consent of the Parents*, and if successful would let him know. That when he mentioned it to the Girl's Parents, they set their faces decidedly against it, and actually were nearly quarrelling with himself. He communicated this result and returned the 5 Rupees to Tapeedas (the Bridegroom) and to Bhugwandas, who complained to the Cast, and Respondent answered the charge before them. He in conclusion declared that the Girl's Parents had nothing to do with the Mungnee.

The Contract was as follows.

Tuesday 1st Phalgoon Sood A. S. 1863 (10th March 1807) Bhugwandas Bindrabindas writes to Rughoonathdas Bhugwandas.

wandas. We have betrothed Goolab, the daughter of Tapeedas Rughoonathdas, to Tapeedas the son of Nundlal Bhugwandas, and have settled that the Boy shall remain in Surat, and have both agreed to the above articles, to take effect in two Months.

(Signed) BHUGWANDAS BINDRABINDAS.

Witnesses,

NANABHBEE MEETHA SHAH,

GOKOOL BHAEE HUREE BHAEE.

The Court took the evidence on oath of Prubhoodas Nanabhaee, and of Gokool Huree Bhaee, the former of whom corroborated Respondent Prubhoodas's account of the transaction, which he said took place in his own house, and deponent drew out the Mungnee Paper.—The latter, Gokool Nanabhaee, said he was called in by the first witness to attest the Mungnee Paper in presence of Appellant's Father and of Respondent Prubhoodas, who drew out the contract, and asked witness to sign it. He was a witness to Respondent Prubhoodas receiving the Paper and 5 Rupees, under the conditions above stated, and moreover that in consequence of a discussion before the Cast, the Mungnee Paper, and 5 Rupees had been placed, and still were, in deposit with witness.

The Court referred the case in this stage to the Shastrees, who found from the pleadings and evidence, that the earnest of Rupees 5, and the contract, were certainly given by Appellant's Father Bhugwandas Bindrabindas, to Respondent Prubhoodas Rughoonathdas, but that the contract did not bear the signatures either of Goolab's Father, or Grandfather, therefore the consent of the Girl's natural Guardians was not shewn to have been obtained; (1) that the Uncle, Respondent, took the earnest

(1) It will be observed that scarcely one of the Vyuvusthas of the Shastres, recorded in these Reports, fairly quotes the very words of the authors to which it refers, and in very few instances is even the Chapter named. The Vyuvusthas appear therefore at first sight to be opinions on the case, worked up with the Shastree's own views of Equity and Custom.

nest and contract conditionally, to obtain the parent's consent, which was shewn to have been refused; that the Dower said by Appellant

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as well as Law, instead of a Quotation of the writings of Hindoo Law authorites bearing on the point at issue, the applicability of which the Judge of the case is to be left to decide upon. He might be assisted by the remarks of the Shastree in his Vyuwustha upon these passages, but without such quotation, there is no security against partiality or wilful misstatement, while few would have leisure, if they possessed the means, for examining their correctness by a reference to the standard works on the subject in our own language. I was led by these circumstances to analize the Law opinions I met with, by referring, with the assistance of my own Pundit, to the authors upon whose works they are said to be framed—It will be seen from these Reports, that the three works held in the greatest esteem on this side of India are, First, the Mitakshura, a commentary on the Institutes of Yagnyuwulkyu by Vignyaneshwur, of which Mr. Colebrook says in his Preface to the Translation of its Chapter on Inheritance, "The range of its authority and influence "is far more extensive than that of Jimuta Vahana's treatise," (printed with it) "for it is "received in all the schools of Hindu Law, from Benares to the Southern extremity of "the peninsula of India, as the Chief groundwork of the doctrines which they follow, "and as an authority from which they rarely dissent. The works of other eminent writers "have, concurrently with the Mitacshara, considerable weight in the Schools of Law "which have respectively adopted them; as the Smrite Chandricá in the South of India; "the Chintamani Retnacara and Viváda Chandra in Mithilá; the Viramitrodáya and "Camalácara at Benares; and "*the Mayucha*" among the Marhattas, (and all on this "side of India,)" "but all agree in generally deferring to the authority of the Mitacsharâ, "in frequently appealing to its text, and in rarely and at the same time modestly dissenting "from its doctrines on particular occasions."

Second, the Muyookhu ("*Mayucha*" above), which was written by Bhasker Neelkunthu who divided it into twelve Books, each embracing a particular subject of Hindoo Law, and collectively styled the "Twelve Muyookhus of Bhugvut Bhaskur," or "Rays of the Sun." The Vyuvuharu Muyookhu is the one of these always referred to in Civil Law.

Third, the Munvurthu Mooktavulee, which, in his preface to the Digest, Mr. Colebrooke calls" the celebrated Gloss of Koollooku Bhuttu on the institutes of Munnoo. A comparison of this last Book with Sir Wm. Jones's translation of Munnoo is perfectly easy, as the translation is made to correspond in the number of Chapters (Udhyayu) and verses (Sloku) with the original.

The Mitakshura is divided into three Books; and those again into Chapters. Its last Book, upon Penance, is rarely applied to. The Index to the two first Books, which I had translated for myself for a greater facility of reference to this standard work, I have ventured to annex to these Reports.

The Vyuvuharu Muyookhu comprehends the same subjects as the Vyuvuharadhyayu, or Second Book, of the Mitakshura, but differently arranged.—It is also more full on some points. With respect to the notes here offered on the Vyuvusthas, they cannot be considered of any authority in their particular cases, being only such passages out of the Shastree as my Pundit held to have formed the ground work of the Shastrees' opinions. Where I could meet with translations of them, either in Sir Wm. Jones's Munnoo, Mr. Colebrooke's Digest, or his Mitakshura, I have substituted them for mine. My own translations, given when these are wanting, are as literal as a want of knowledge of Sankritu admitted of. I have not ventured of myself to select a single passage from any English translation, and the quotations in the notes may be relied on as the selections of a Pundit,

Appellant to have been settled, was not even mentioned in the contract, and though the members of the cast when called on by them had not given clear evidence, they had from them ascertained, " that the consent of the Father, if alive, must be ob- " tained," which not having been done the present Mungnee had not been properly ratified. The Shastrees also stated, that by the Laws of the Shastr " while a Father is alive and sound " in mind, he is the proper authority to sanction a contract for " the marriage of his children," (2) and the claim of Appellant was therefore irregular. The evidence of the cast alluded to by the Shastrees was obtained from seven persons. The first said " the " custom respecting Mungnees is not fixed, but when a Mung- " nee or Marriage contract is to be settled, it must be done in " presence of four persons, on whose foreheads the (officiating) " Brahmun must affix the chandla, or mark on the forehead " and give them Coriander Seeds (Dhunna) mixed with mo- " lasses, (Jagree). The Father of the Bridegroom must give " an Earnest of 35 Rupees, then or sometime before the " Marriage, and the contracts are generally thus performed in " our Cast."

A second said, " It is usual in betrothing children in our " Cast, for the father of the Girl to receive Rupees 440. The " Brahmun, or Gour, must affix the Chandla, and the Bride- " groom's Father is then to distribute Alms. The Gunes Pooja, " or prayers customary on these occasions having been perform- " ed by the Gour, Cocoanuts must be distributed to the as- " sembly, and the Mungnee is then concluded."

The

Pundit, verified by a reference to the original in each instance. The Vyuvuharu Purisishthu, and some other Books, are now and then referred to, generally in elucidation of the more concise authorities above mentioned.—The Sudur Udalut has lately issued instructions, that the Shastrees of all the Courts shall in future note in their Vyuvusthas the text from which they are drawn, with the Chapter, Section, and page, in which they are to be found.

(2) A saying of Yagnyuwulkyu, in the Mitakshura, Acharadhyayu, or First Book, Vivah Prukurn, leaf 8th page 2d line fourth, runs, " Let a virgin be given away by her Father, Paternal Grandfather, Brother, Paternal and Maternal Uncle, and Mother, in their proper order, the next who is unblemished, in default of the one above him."

The third said " the Father of the Girl is to receive Rupees " 441, and by the hands of the Gour to send back a paper " of Sugar cakes and 1 Rupee, which confirms the Mungnee. " The Chandla ceremony must be observed, and Molasses, " Coriander Seeds and Cocoanuts must be distributed among " the assembly."

The fourth also said, that the Mungnee was performed by the Father of the Girl receiving Rupees 441 and returning 1 Rupee, with a paper of Sugar cakes, through the Gour.

The fifth stated, "the Boy and Girl are betrothed by verbal " agreement and Earnest given, which is to be either a silver " ornament (Gophnee, worn at the back of the Head) or Ru- " pees 5 or 6 for the purchase of it, and then the mungnee is " settled."

The sixth said, " a verbal agreement having been made, " the Earnest of a silver ornament, or Rupees 5 as money to " buy one, is to be given, and the mungnee is then concluded. " After this the Bride's Father must return Rupee one and a " paper of Sugar Cakes."

The seventh said the same, adding, that after the mungnee was so settled the Bridegroom's Father must pay Rupees 441, as Dowry, of which Rupee one is to be returned with a paper of Sugar Cakes, by the Bride's Father.

Appellant finding the suit going against him, attempted to get it referred to the Cast, but Respondents objected, and prayed judgment upon the present suit, brought by Appellant himself in the Court against them.

The Court observed that Respondents also rested their case on the mungnee, or paper produced by Appellant being no contract, but merely a proposal from the father of Appellant to that of Respondent to marry their Grandchildren together; they also contended, that if their Father Rughoonathdas had

signed

signed the paper, still the transaction would not be binding on the Girl's parents, because carried on without their consent, without which, during their life, the Grandfather had no authority to conclude any agreement for the marriage of their Children.

S. Bouchier *Assist. Judge.* Decree 26th March 1808.

The Court considered these arguments entitled to great weight, and reconsidering also the facts of the case, dismissed the suit, Appellant paying Costs.

Court of Appeal sitting at Broach.

T. A Grant. *Chief Judge.* S. Smith 3d do. Decree 29th August 1808.

When Appellant carried his claim before the Court of Appeal, that Court consulted its Law Officers, who gave it as their opinion, that the contract was not binding because of two months allowed therein, and no mention being made of the Dowry in the contract, though the amount was named in the Petition. They stated the Law of the Shastr to be, that "The consent of the "Father must be first had and obtained to the contract," that the opinion of the Cast was divided, and they from all these circumstances pronounced the Contract null and void.

The Court finding their Law Officers concurred in opinion with those of the Zilla Court, that the assent of Tapeedas, the Father of the Girl Goolab, was indispensible to give validity to the proposed contract, and under the ascertained want of that assent, affirmed the Decree of the lower Court, Appellant bearing Costs again in Appeal.

Sudur Udalut

Jon. Duncan *President.* T. Lechmere R. Rickards Decree 9th May 1809.

The Sudur Udalut held the same opinion with the Provincial and Zilla Courts, and their Decrees in the suit were affirmed, as agreeable to the Hindoo Law opinions given in both Courts, and consonant with the dictates of nature, reason, and natural justice, that a man's daughter should not be given in Marriage without his consent, which was clearly never obtained in this instance.

N°. 6.

SHUMBHOODAS BHUGWANDAS,.....Appellant.

VERSUS

KESHOOR SHEODAS,.....Respondent.

Broach Udalut G. L. Prendergast, *Judge.*

Decree 26th April 1809.

THIS was a claim preferred by Appellant for Rupees 1,043, balance of an account Current due him by Respondent's Father Sheodas Goolal, which appeared in Appellant's Books on an examination by order of the Court as follows.—

Goolaldas Moorardas Mehta's Account A. S. 1842.

To Balance 1st Kartik Sood 1842 or Oct. 1785	968	„	„
To Interest	85	2	„
Rupees	1,053	2	„

Ditto——Ditto——A. S. 1854. or A. D. 1797.

To Balance	1,053	2	„	By Cash received through Mukundas, 9th Kartik Sood, 1854 or Oct. 1797	10	„	„

Suit to recover the amount of an account Current, due by Respondent's Father, of oldstanding, but in part payment of which Rupees 10 had been received by Appellant within 12 years from the date of filing the Suit.

Doubts entertained of the truth of the alleged payment, and the claim dismissed in all the Courts, as not cognizable under Section 13, of Regulation 1. of A. D. 1809.

Appellant stated that Sheodas (Respondent's Father) died last year, and on Respondent's coming to Surat to perform his funeral ceremonies, he, Appellant, made a demand for payment of his account, but had been put off by him.

Respondent said he knew nothing of the claim till about 4 months ago Appellant made the demand, and said it was a debt due by his Grandfather (Goolaldas Moorardas) whom Respondent stated to have died in A. S. 1839, twenty five years ago. He prayed a full investigation and judgment.

The Court referred Appellant's Books to two Merchants to report

report on their correctness, which the suspicious entry of Rupees 10 „ „ made somewhat doubtful.

The Merchants, in a Paper dated 7th March 1809 or 6th Phalgoon Vud 1865, reported that they considered the whole account correct, and this entry so in particular, though denied by Respondent, and gave it as their opinion that Appellant's demand was valid.

Appellant produced a letter to Respondent from a Parsee named Jeejeebhaee Jusoobhaee of Surat, "taking the liberty, as having "been formerly arbitrator between appellant and his father "in A. S. 1852 (when he persuaded appellant not to proceed "to extremities against his father) to recommend his satisfying "appellant in some way." 2d, an Arbitration Bond by his own Father and Respondent to abide by the decision of the above Jeejeebhaee and one Khooshaldas Jugjeewundas.

The Court remarked that these papers proved Appellant's claim not to have been fully admitted, even by Respondent's father, (the Appellants allowing that no decision was made upon them): that the Cash credited to Respondent, was neither paid by him, by his Father, nor Grandfather, but by *Appellant's own brother Mukundas*, and therefore was not sufficient grounds for bringing the claim within 12 years. Appellant's suit was accordingly dismissed under Section 13 Regulation 1 of 1800, whereby "The Judge is prohibited hearing, "trying, or determining, the merits of any suit whatever "against any person or persons, if the cause of action shall "have arisen 12 years before any suit shall have been com- "menced on account of it, unless the complainant can shew "*by clear and positive proof* that he had demanded the money "*or matter in question*, and that the Defendant had admitted "the truth of the demand, or promised to pay the money, or "that he directly preferred his claim within that period for "the matter in dispute, to a Court of competent jurisdiction "to try the demand, and assign satisfactory reason to the

"Court

" Court why he did not proceed in the suit, or that either from " minority or other good and sufficient cause, he had been " precluded from obtaining redress."

The Provincial Court was clearly of opinion that the payment 11 years ago, of Rupees 10 by *Appellant's Brother* on account of *Respondent's Father* for a debt incurred 26 years ago by *Respondent's Grandfather*, and not shewn in any way *to have been acknowledged by Respondent*, did not afford the slightest ground for entertaining the suit, which they held was properly dismissed under the Provisions of the Regulation quoted by the Zilla Court, the Decree of which they affirmed in favor of Respondent.

Court of Appeal (sitting at Broach.) J. A. Grant, J. Smith, Decree 2d September 1809.

The Sudur Udalut at once concurred in the propriety of the above decrees, and dismissed the Appeal.

Sudur Udalut, Jon. Duncan, *Pres.* T. Lechmere, R. Rickards, Decree 22d Nov. 1810.

N°. 7.

FURIDOONJEE SHAPOORJEE.....APPELLANT,

VERSUS

JUMSHEDJEE NOWSHIRVANJEE.....RESPONDENT.

THE Suit was filed by Respondent in the Surat Court on the 29th November 1808, to recover his own three-fourth Shares of a house; the remaining fourth share he said belonged to Appellant who had forcibly possessed himself of the remaining three shares valued by Respondent at Rupees 1,562, in which amount he sued for recovery of them, at the same time praying for an injunction to Appellant to put a stop to certain repairs he was carrying on until settlement of dispute, and for an order of Court to the Mooftee to examine and report upon the premises, and the merits of the respective claims of the parties to them. Appellant denied the claim to be just, and stated

Surat Udalut, S. Bourchier *Assist. Judge.*

Dispute between two Parsees respecting their right to certain shares of a house descending from their common Grandfather.

Referred by the mediation of the parties, to their Dustoor, or High Priest.

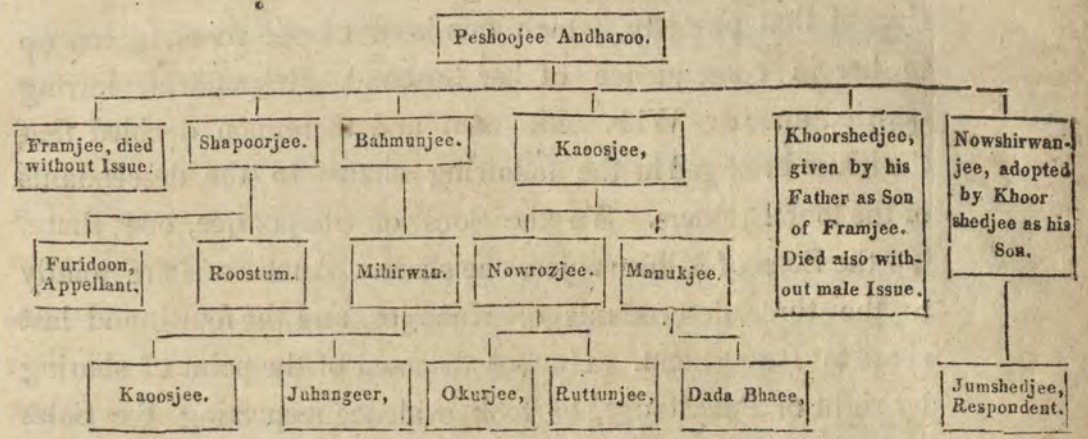
His award affirmed by all the Courts,

since neither partiality nor corruption were alleged against him.

stated that the house originally belonged to their common Grandfather, who left four Sons, Bahmunjee, Kaoosjee, Shapoorjee, (the father of Appellant) and Nowshirwanjee, (the father of Respondent) that each of the brothers received possession of a fourth Share of the House, his father's share descending to himself Appellant; that Kaoosjee had two Sons, one of whom, Manukjee, had mortgaged his share to Appellant, and that of Bahmunjee was also mortgaged to him by the Widow of Miherwanjee, son of Bahmunjee, about 12 years before, under a further agreement that she would not sell it to any one but Appellant; notwithstanding this, Respondent had privately procured a Deed of Sale of it from her, but Appellant's signature as a joint proprietor in the House not having been obtained to this Deed, it could not hold good, besides that the share previously belonged to Appellant by Shufaut, or right of pre-emption. The present unjust claim was solely preferred, he said, in consequence of Respondent's having discovered his intention of complaining against the latter's conduct in this instance, and he charged Respondent in conclusion with having possessed himself of certain Effects and Dufturs of their Grandfather and the joint property of all.

The Court thought the dispute fitter for arbitration from its nature, and therefore prevailed on the parties to refer the case to Kaoosjee Bhikajee, their Dustoor or High Priest, and it was sent to him for decision accordingly.

The Dustoor, after examining several witnesses, gave in the following award, founded upon the Genealogy of the parties, which he thus stated.



Framjee dying during the life time of his Father Peshoojee, the latter, in order to conform to the indispensible Law of the Parsees "that where a man has no male Issue, a Son must be "adopted, either by himself during his life, or for him by his re- "lations after his decease," surrendered his fifth son, Khoorshedjee, to be the adopted Son of Framjee. Peshoojee then died, leaving five Sons alive, each entitled to a share of the Father's property. Khoorshedjee, adopted for Framjee, being himself without male Issue, again adopted his Brother Nowshirwanjee as his Heir and shortly after died. The Dustoor therefore concluded, that Nowshirwanjee was entitled to two Shares, one out of his Father's Estate; the other, that of Khoorshedjee, as being his adopted Son. In explanation of this opinion the Dustoor said, that, by the Rules of their Religion, if a Son die during his Father's life time, the Father is entitled to his property, because he pays his Son's funeral expenses. But if, after the death of the Father, a Son by his own free will and consent become the adopted Son of another, he is entitled, as above shewn, to two shares, one from the property of his real Father, and another from that of the person who adopted him.

Vide No. 1 of these Reports.

The property which had come to Khoorshedjee from his adopted Father Framjee, was distinct and separate, and the other brothers had no claims whatever to it. The daughter of Khoorshedjee, who was the Wife (as well as first cousin and aunt by adoption) of Respondent, had come into possession

sion of that property, which consisted of one room, given up to her in consequence of her husband, Respondent, having married another Wife. He then and thereupon decided that the house belonged in the following shares to the descendants of the four Brothers. To the Sons of Shapoorjee, one share. To the Sons of Mihirwanjee, one share. Another share jointly to the three descendants of Kaoosjee, and the fourth and last share to Respondent. Having disposed of the point of sharing by right of inheritance, he took evidence respecting the Sales and Mortgages, and decided, that since Koonwur Baee, Wife of Nowrozjee, actually sold her eighth share to Respondent, and at the same rate at which he had also purchased that of Mihirwan, Respondent became thereby altogether entitled, including his own Share, to two and a half Shares, (or five eighths) of the whole house, and that he actually possessed them, and no more. Appellant had (two eighths or) one Share in his own right, but as the remaining Share of one eighth, belonging to Dada Bhaee, was also held by him in mortgage, he, Appellant, ought to have the refusal of the purchase of it. As the Appellant had no charge of corruption to allege in bar of the confirmation of this award, the Assistant Judge passed a Decree agreeably to its provisions.

Decree 25th May 1809.

The *Provincial Court* at once affirmed the Decree, and the award on which it was founded, under the provisions of Section 20th Regulation 7th of 1800, (being a Regulation for extending and defining the powers and Duties of the *Sudur Udalut*) of which the Section quoted provides " that if a Petition of Appeal shall " be preferred against the decision of any inferior Court founded " on an award of arbitration, it is to be dismissed with costs, un- " less it be fully proved, to the satisfaction of the Court, by the " Oath of two credible Witnesses, that the Arbitrators have been " guilty of gross corruption, or partiality, in the cause in which " they have made the Award," because neither gross partiality nor corruption had been proved against the Dustoor, nor even

Court of Appeal sitting at Broach, T. A. Grant, J. Smith. Decree 16th Sept. 1810.

alleged,

alleged, the only grounds for appeal being that its provisions were contrary to Justice and Equity.

The Sudur Udalut further dismissed the appeal on the same grounds.

Sudur Udalut, Jon. Duncan, *President*, T. Lechmere, R. Rickards, Decree 7th April 1811.

Note. This Suit is reported more on account of its singularity, than as a decision of the Sudur Udalut, since that Court, as well as the lower Courts, confirmed the award merely *as* an award, without inquiring into the merits of the Dustoor's decision.

N°. 8.

DEO BAEE WIDOW,..... { *of Munohurdas Wunarsee.* } *APPELLANT.*

VERSUS.

WAN BAEE WIDOW, KUKKOO and PREM BAEES, DAUGHTERS of..... { *Mohundas Wunarsee.* } *RESPONDENTS.*

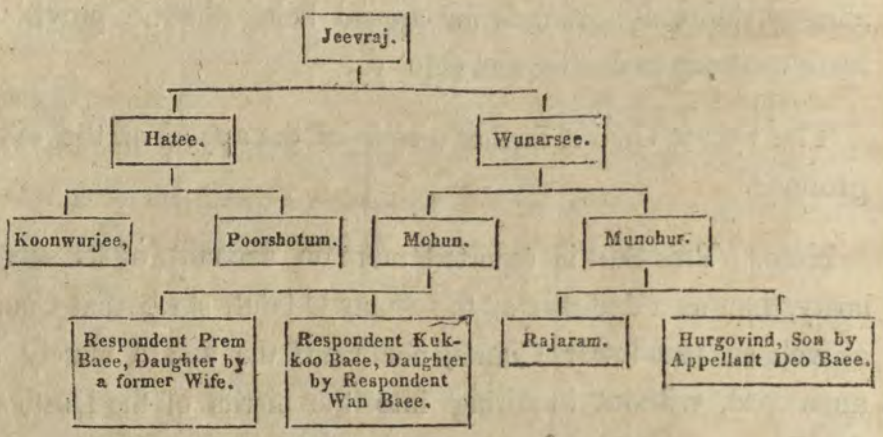
THIS suit was filed in the Zillah Court by Respondent Wan Baee on the 10th June 1806 to recover property valued at Rupees 4,300, being a Share of an inheritance belonging to her late husband, by whose death it descended to Respondent who sued for it.

Surat Udalut. S. Bouchier, *Assist. Judge.* Decree 29th June 1808.

Respondent stated, that her husband with Munohurdas, Appellant's husband, and their two Cousins Koonwurjee and Poorshotum, Sons of Hatee, formed an undivided Hindoo family as follows,

The parties to the original Suit were Widows of two full Brothers, Plaintiff, af-

terwards Respondent Wan Baee, suing for the Estate of her late husband from Appellant, who detained it under plea of a Will by Respondent's husband in favor of his Brother, to the exclusion of the right of his own children, the other Respondents, further than for a maintenance. Claim adjusted by the Shastrees of the Zilla Court, but the Respondent's right clearly recognized by the Court of Appeal and by the Sudur Udalut, which declared the award made by the Zilla Shastrees to be illegal under the Regulation, and fully confirmed to the daughters of Mohundas (Respondent Wan Baee being dead) their right to their Father's property.



living conjointly and trading together in one Firm. That on the death of her own husband, Mohundas, about 13 months before filing the Petition, Appellant's husband Munohurdas, in presence of four of the Cast, and two Goldsmiths, made a division of the family property with Koonwurjee and Poorshotum (the two other remaining members of it,) receiving himself Rupees 6,000 worth of ornaments, Rupees 1,000 in Copper and Brass ware, and a house worth Rupees 1,600, making the whole property received by him worth Rupees 8,600. That Munohurdas having been drowned about 9 months ago, this Share of the property came into possession of Appellant, who refused to surrender the half of it, or the Value Rupees 4,300, and Respondent therefore prayed that the property might be attached, and her claim to share be investigated.

Appellant, to bar Respondent's claim upon her, stated that Mohundas in Sumvut 1861 or A. D. 1804 | 5, made a Will signed by himself and two Daughters Kukkoo and Prem Baees, thereby bequeathing his share of the family property and interest in the firm to his brother Munohurdas, Appellant's late husband; she pleaded that by the law of the Cast, Respondent was only entitled to Food and Raiment; that her Sons Rajaram and Hurgovind were Heirs to the property in dispute, and entitled to succeed to it by the laws of the Shastr, the Will of Respondent's husband, and the Rules of the Cast. Lastly,

that

that Respondent had already got possession of Rupees 700 worth of Jewels.

Respondent denied being possessed of the ornaments, and contended in opposition to the Will, that both by the Shastr and Laws of the Cast, herself and Daughters must be nevertheless Heirs to her late husband's property.

Appellant in rejoinder asserted that Respondent had been formerly turned out of doors by her husband, who quarrelled with her for pawning without his knowledge or permission, part of her Jewels, which were redeemed by Munohurdas with money out of the Firm, but for which disbursement his Cousins would not allow Appellant's Sons credit in the accounts.

The Will was dated in A. S. 1861, or A. D. 1805, and purported to be a Release passed by Mohun to Munohur resigning all his Estate to the latter, and covenanting that the Respondents, his Daughters, should be maintained by him, but should have no claim whatever to the estate.

The parties having expressed a wish to refer their dispute to arbitration, were encouraged in this by the Court, but being unable to agree about arbitrators, prayed that the cause might be referred to the Shastrees of the Court, which being agreed to, they gave in the usual Arbitration Bond.

The Shastrees, Baba and Anundram, took the evidence of the Cousins, Sons of Hatee, and also of one Gungadas. This last witness said " Munohurdas asked Mohundas, as you " are ill, had we not better divide the property? Mohun- " das said, let us divide it into four Shares, and each " take our own. Munohurdas said, I will take care of, " and cherish, your Wife as a Mother, on which Mohundas " bequeathed him his Share." Other persons also proved the Will of Mohundas in favor of Munohurdas (but without mention of the daughters' signatures) and the subsequent division of the property, of which Munohur took two Shares out of four,

four, under the authority of the above will. The Shastrees ascertained the Genealogy of the family, as above shewn, and then gave the following award, which was made a Decree of Court.

They found that Mohun not living in harmony with his wife, bequeathed his fourth share at his death to his own brother Munohur, who, on a division of the family property a few months after Mohun's death, received half of it, noting it in the Tukseem Namu or Deed of Division, in the name of his Father. That in this Paper, ornaments to the value of Rupees 1,458-1-00 were entered as belonging to Respondent; some more, to the value of Rupees 221-3-00 to her Mother-in-law. They could not ascertain whether the husbands of the parties were separated or not, as a division of the debts and credits of the firm had not taken place, but considered that by the Tukseem Namu, Respondent was entitled, after deducting the Rupees 300-0-00 formerly paid for redemption of her Jewels by Munohur, to Rupees, 1,185-1-00 worth of Jewels, and to those value Rupees 221-3-00 formerly belonging to her Mother-in-law. They decided that she should have possession of these till her death, when they would descend to her daughters. That Rupees 1,001 should be lodged with a Merchant, by Appellant, in order that Respondent might be supported with the interest of it, but if she went on a Pilgrimage, Rupees 200 or 300 of this sum was to be given her for her expences, and with the balance they were to defray her funeral charges. She might either live in a room, to be allotted to her in the family house, or be provided with a separate dwelling of about Rupees 500 Value, which on her death would revert to Appellant's Sons. Lastly they awarded that she should be furnished with 3 maunds' weight of Cooking Pots.

Court of Appeal Sitting at Broach, J. A. Grant, A. Smith,

Deo Baee appealed against the above decision to the Provincial Court, on the grounds that the Shastrees had first made out an award differing from that given into Court, and she would

would not abide by it, as a full division of the family property had not taken place, the Shares of the Debts and Credits of the firm remaining to be portio ned out.

The Court under Section 14th Regulation 2d of A. D. 1800, referred the case to its law Officers, whose Vyuvustha was as follows " Mohun bequeathed his share by will to his Brother, " but he had not power to give his share to any one; for the " law of the Dhurm Shastr, according to the saying of Na- " rud, is " If a person has Children, his wealth cannot be " alienated, for he may be sick, or in wrath, or his affections " may be estranged, and the Law of the Shastr does not permit " that person to give away his wealth." (1) " Again, Mohun " at his death bequeathed to Respondent neither a house to " live in, nor property for her support; but a wife has a right " to a Share of her husband's property, (2) and when she be- " comes a Widow, the whole devolves to her. (3) Respondent " has a daughter, and according to the Shastr, if there be no " Son, a Daughter stands in place of a Son. (4) Therefore " Respondent's late husband's share is to be given up by Ap- " pellant

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(1) Mit. Second Book, leaf 69th, Page 2nd, line 1st. Narudu, " What has been given by men agitated with fear, anger, lust, grief, or the pain of an incurable disease, &c. must be considered as ungiven;" for the rest vide Cole. Digt. vol. 2nd, page 184.

(2) Mit, Dayu Vibhagu, leaf 47th, page 2nd, line 2nd, Yagnyuwulkyu, " If he make the " allotments equal, his wives, to whom no separate property had been given by the husband " or the father-in-law, must be rendered partakers of like portions" on which the Commentator remarks " when the father by his own choice, makes all his sons partakers of equal " portions, his wives, to whom peculiar property had not been given by their husband, or by " their father-in-law, must be made participant of shares, equal to those of Sons." Cole, on Inheritance (Mit.) page 264.

(3) Mit. Dayu Vibhagu, leaf 55th, page 2nd, line 6th, "The Widow of a Childless man, keep- " ing unsullied her husband's bed and persevering in religious observance, shall present his " funeral oblation, and obtain his entire share." Cole. Mit. 326. Vide also the law "The wife, " &c." in page 324, quoted in case No 37, Also Digest. Vol. 2, page 478th.

(4) Munoo, Chapter 9, v. 130—" The son of a man is even as himself, and as the son such " is the daughter so appointed" The commentator remarks, " A son is as one's self, so says the " Vedu. Equal to him is a daughter, for she also is produced from the very same body. " Wherefore that daughter being the image of her father and being present, how shall " another, setting aside this daughter, take the property of her father deceased without a " son?"

"pellant to Respondent. What the Shastrees of the Surat "Udalut have stated in this cause is correct, but we have to "subjoin that Respondent has a full right and power over her "late husband's property. Respondent has a daughter, and "therefore a share of the family house belongs to her, and after "Respondent's death that share of the house, and residue of the "Jewels after payment of her funeral expences, are to be divid- "ed between the two daughters of Mohun. The authorities, "for the above are the Mitakshura and other Books."

Decree 30th March 1809.

The Court upon this exposition decided (in modification of the lower Court's Decree) that as it ascertained the right of Respondent to the property specified in that Decree, all such property real and personal, be for the use, and at the disposal, of Respondent, during her life, and the residue at her death, after defraying funeral charges, descend to the surviving issue of Mohun, Respondent's deceased husband.

Sudur Udalut.
Jon. Duncan. *Prest.*
T. Lechmere.
R. Richards.
Decree 2d Dec. 1810.

Appellant carried her cause before the Sudur Udalut, and the usual pleadings had been gone through, when Respondent died, and a notice was served upon the Heirs of her late husband Mohundas to come in and defend the Appeal then pending, within a month, or in default, Judgment would be passed on the merits of the case as then before the Court. Kukkoo Baee, own daughter of Wan Baee, appeared by Wukeel, and defended the cause.

The President and Mr. Lechmere were for affirming the Decree of the Provincial Court, the Costs being borne half by Appellant, and half in equal proportion between Respondent Kukkoo Baee, and the other surviving Issue of Mohun, for Prem Baee, though not appearing to defend the cause in any stage of it, was held entitled to share in the amount decreed, because by Section 12 of Regulation 1 of 1800—"the Judge's Court is not "to pass a Decree in any Suit concerning the succession or right "of inheritance to land, or Houses, or other real property to which "there are more claimants than one, who by the Law of their "Religion, or such as is otherwise declared applicable to the claimants,

" claimants, would be entitled to a portion of the property, ex-
" cepting the property be, by the Decree, adjudged to all the
" claimants in the proportion to which they may be respectively
" entitled;" and as Prem Baee thus became entitled to a share of the profits, so she must bear her proportion of the charges consequent on the attainment of them.

Mr. Rickards was in favor of the Decree of the Zilla Court, for the evidence of Gungadas before that Court, and the Will itself proved that the share belonging to the Testator was bequeathed to Munohurdas on the express condition of the Testator's Wife and family being taken care of, and they were consequently fully provided for, whilst the daughters, Respondent and her half Sister, Prem Baee, had signed the Will, and moreover the parties had agreed to refer the case to the arbitration of the Shastrees, binding themselves down to abide by their award, which had since been confirmed by the opinion of the Shastrees of the Court of Appeal, and appeared to combine a due regard for the Will of Mohun, with those prescriptions of the Hindoo Law, which were so naturally and so justly favorable to the Widow and family of a man of property after his decease. It was however his opinion that as Respondent and her Sister were, by the terms of the Will, expressly to be protected and taken care of, they would be justly entitled to benefit by the decree in Wan Baee's favour, if not suitably provided for by the family of Munohur. The President, to prove the daughter's right to inherit in preference to more distant relations, quoted Sir William Jones's Translation of the Laws of Munoo, Chapter 9th Section 130 " The son of a man is even as himself, and as the Son, such " is the daughter thus appointed; how then, if he have no Son, " can any inherit his property, but a daughter, who is closely " united with his own Soul?" indicating that where there is no Son, the daughter is to inherit in exclusion to more distant relatives, and in Colebrook's Digest Volume 3rd Section 224 (5) Vrihusputee,

(5) Also Colebrooke's Mitakshura, page 341.

huspulee, " as Sons, so do the daughters, of men, spring from suc-
" cessive bodies; how then should any other human being inherit
" the property, while a daughter exists," the commentary on which Text notices that " As the father sprang from the Paternal
" Grandfather, and the son from the Father, so does a daughter
" likewise spring from her Father, who proceeded from her
" Grandfather; how then should any other, the Brother of the
" deceased, *or the Son of that Brother*, inherit the property
" for the Brother of the deceased, or other collateral, sprang
" from the Grandfather of that daughter, but not from her
" Father."

The paper called the will of the deceased was rather a General Release, and although the two daughters appeared to have signed to a deed thus ruinous to their rights and prospects, the Law might very well be admitted to be competent still to decide as if they had not become parties to any such deed, which should only be ascribed to ignorance on their part, or to the powerful influence over them of their Father, or to both of these causes combined. Advantage should not in equity be allowed to be taken of such circumstance to their manifest prejudice, especially as Munohurdas did not survive long enough to settle them in life, as was the plain intention of their own parent, who also appeared to have made the disposition in a fit of anger against his then wife, the late Respondent, and this circumstance went likewise by the Hindoo Law to invalidate the act, as is declared in the commentary to the 97th Section of Colebrooke's Digest volume 3rd, " The Gift of a man," (the law treating here expressly of the distribution made by a Father in his life time) " instigated by lust, wrath, or the like, is not valid."

He observed, too, that the Provincial Court did not appear to consider the Report of the Surat Shastrees as an award of arbitrators (from which an appeal would generally be inadmissible) but took it as an opinion given on a case referrable to them under Section 15th Regulation 2nd of 1800, for this reason, " that

" a

" a Judge is prohibited" by Section 4th Regulation 6th of 1800, " from allowing any of his public Officers, or private Servants, " or any of the authorized Wukeels practising in the Courts, to be " arbitrators in a cause." Mr. Rickards concurred, on hearing the invalidity of the arbitration on which the Decree of the Zilla Court was founded, in the propriety of affirming that of the Provincial Court accordingly.

This case is altogether an extraordinary one. The Zilla Shastrees appeared to hold a middle course, neither declaring separation not to have taken place, nor granting Respondent a share, to which she would be entitled if division had been effected, but allowing her all the property noted in the Tukseem Namu, as " her own, and her mother in-laws," and a maintenance. In their opinion therefore separation had not taken place; and the opinion of the Court of Appeal Shastrees only applies to a case where division has been effected.— Thus the Law Officers are completely at variance, whilst none of the Decrees declare whether partition had or had not been made.

No. 9.

*HURRUKCHUND MOTEECHUND, Wukeel, NANA BHAEE GOOLABCHUND,** } PLAINTIFF,

VERSUS

KHOOSHALCHUND GOOLABCHUND, and ten others, the Punchayut of SHRAVUK BEESA, OOWAL BUNYUNS,.. } DEFENDANTS.

Surat Udalut, N. Crow. *Judge,* Decree 10th May 1806.

THIS suit was filed on the 25th April 1806 to recover damages Rupees 1,000 on account of loss of Cast, by being expelled from it by Defendant Khooshalchund, and 10 others, of the Cast.

Suits filed by one Hurrukchund Moteechund against different Members of his own Cast, that of the Shravuk Beesa Ooswal Bunyuns, to recover damages

Plaintiff recalled to the Judge's recollection a charge of having murdered his wife, on which he had been imprisoned about two years before, but was discharged, as he alledged, with honor.— He said that the Defendant Khooshalchund and the Heads of the

* Vide this Wukeel's Suit No. 4 of the foregoing Cases.

from them for expelling him from the Cast in order to punish him for an alleged crime of which he had been nevertheless previously acquitted before the Court of Session.

The acts of expulsion declared by the lower Courts to be malicious, and in contempt of the authority of a Judicial tribunal, wherefore full damages and Costs were awarded to Respondent the original Plaintiff. But the decisions were reversed by the Sudur Udalut, under a conviction that the Members of a Cast possess the right of expelling one of their body, except when done from purely malicious motives, and the Respondent was ordered to refund all sums received in damages and Costs, and referred to his Cast, under an award given by the heads of the Cast at Ahmudabad, to whom the Court had referred the final decision of Respondent's claim.

Surat Udalut.
N. Crow.
Judge.

the Cast, notwithstanding his acquittal, refused to readmit him into the Cast, and never invited him on occasions of mourning or rejoicing, to join the assembly of the rest—That his daughter been of full age, 14 years, he was anxious on her account to be readmitted, that he might get her Married, and therefore prayed the Court to summon Defendants, Heads of the Cast, and get him readmitted to the Privileges of Cast.

The Defendant Khooshalchund observed, 1st, that it was not an act of 10 persons alone, but of the whole Cast, united, of which Plaintiff had complained; 2ndly, that his Children were not deprived of their Cast, neither had any attempt been made to do it, nor molestation offered them; 3rdly, That two meetings had been held at his, the Shet's, house respecting Plaintiff, but the Cast could not come to any agreement to readmit him.

The Judge observed, that instead of Defendants proving any crime or offence against Plaintiff to justify them, as the Shastrees said was required, for expelling him, they only went upon an alledged crime of which he had been acquitted by the Surat Sessions in Apirl 1804, and as they had no other reason to offer, they as well known Directors of the acts of the Cast were adjudged to have been guilty of an insult to Government by contumelious rejection of the proceedings and competency of its judicial authority, and ordered to pay Rs. 1000 damages to Plaintiff and bear all Costs of suit Rupees 50.

Plaintiff on the 20th May following filed another suit, against.

DHURMCHUND ABEELA, and 21 other persons of the SHRAVUK BEESAOOSWAL BUNYUNS,..... } *Defendants.*

laying claim to Damages Rupees, 1,183, from these Defendants, as they had by their particular hostility and opposition prevented the readmission of Plaintiff into his Cast, which would otherwise have been brought about by the mediation of the eleven persons against whom he obtained the above decree to that effect on the 10th of the present month.

Defendants

Defendants merely denied any quarrel with, or opposition to the former Defendants, and challenged Plaintiff to point out the time or mode of its taking place.

The eleven former Defendants being called as witnesses on this occasion, admitted that they had proposed Plaintiff's readmission to the members of the Cast, including the present Defendants, and that the whole Cast, amounting to 250 persons, had refused to receive him.

Defendants allowed this to be true, and damages the same as before Rupees 1,000 were awarded to Plaintiff, with costs to be borne by Defendants.

The Head of the Cast, Khooshalchund Shet, voluntarily gave in a paper from his party agreeing to readmit Plaintiff to the privileges of Cast, and Plaintiff waived payment of the Decree against them in consequence, but the whole Cast having since on the 5th August tumultuously assembled, and it appearing the determination of the whole Cast to prevent performance of Khooshalchund's promise, the Judge ordered all the Defendants in the first Suit (the others having paid the amount decreed against them) into confinement until payment of the damages awarded, or readmission of Plaintiff to his Cast.

On the 28th April 1807 Plaintiff appeared in Court with a rich man of the Cast, Plaintiff to complain that Khooshalchund still thwarted him in his readmission by refusing to tear up a Paper of rejection signed by the whole Cast, when he was first expelled, in which obstinacy he was joined by seven others of the Cast. The Plaintiff's companion to complain that he had been threatened with excommunication if he invited Plaintiff to his dinners as he wished, and that many persons friendly to Plaintiff would not attend the dinners, from not knowing how to act. The Court called the Defendants up and finding the complaint true, confined them also, until they should readmit Plaintiff to his privileges.

The

The DEFENDANTS in the both Suits, 33 in number, and the 7 persons who held out against destroying the Deed of Expulsion..... } *APPELLANTS,*

VERSUS

HURRUKCHUND MOTEECHUND.....RESPONDENT.

Court of Appeal, Sitting at Broach.
J. A. Grant. 2d *Judge*,
Jno. Smith. 3d *Judge*,
Decree 22d Sept. 1808.

APPELLANTS carried their cause before the Provincial Court and pleaded in justification of their having expelled and kept Respondent out of the Cast that he had confessed to the members of it the murder of his Wife, and although he had been acquitted, on his trial for the crime, at the Sessions, yet as the whole Cast had signed the Deed of expulsion, so a meeting of the whole Cast alone could annul it, and that a full assembly had positively refused to do so.

The Court being unable to procure from Appellants any further statement of the grounds for their appeal, than that the act for which they were punished was that of the whole Cast, gave them a month's time to adjust the dispute by readmiting Respondent, but as it elapsed without Respondent being taken back, although by desire of the Cast he made submission to Kooshalchund to induce him to restore the paper of expulsion, which he still refused, the Court affirmed the Decrees of the lower Court with Costs to be borne by Appellants.

KHOOSHALCHUND GOOLABCHUND, DHURMCHUND ABEELA, and others, in all Forty persons of the SHRAVUK BEESA OOSWAL BUNYUN CAST,... } *APPELLANTS,*

VERSUS

HURRUKCHUND MOTEECHUND,.....RESPONDENT.

Sudur Udalut.
on. Duncan. *President.*
T. Lechmere,
R. Rickards.

APPELLANTS in their pleadings firmly maintained the right of the Cast collectively to refuse common intercourse with a man guilty of any crime; said that they had obtained sufficient proof

proof of Respondent's guilt to warrant them conscientiously to believe that he committed the murder, though the evidence might not be conclusive enough in the opinion of the Court of Session to warrant his conviction. That the investigation in the Cast was not with a view to change the sentence of the Court, but was in exercise of a privilege possessed for ages, of preserving the Cast free from the contamination and disgrace of associating with a man conscientiously by them believed to be guilty of a crime, as in the present instance, of having murdered his own wife, and this right of choosing their own associates being inherent in the Cast individually and as a body, notwithstanding any previous trial of the Criminal, the decrees of the lower Courts, depriving the whole Cast in fact of their privileges, were unjust and ought to be reversed. They in conclusion expressed conviction that their proceedings would be upheld by the members of the Cast every where, and their readiness to be judged by the members of it in Goojurat, who, the Surat Judge thought, would disapprove of the act in this instance.

Respondent repeated the fact of his acquittal by the Sessions, and pleaded poverty as the reason for having allowed himself to remain excommunicated two years without complaint, denying at the same time, that he ever confessed the murder, as alledged by Appellants, and upholding his right of restoration to Cast privileges. He quoted the Laws of the Shastre, (as explained in the Muyookh, to leave to the discretion of the Judge the punishment of murder, false accusation of murder, commission of any uncommon or unnatural crime &c.) to warrant and demand the severe punishment of Appellants for so obstinately upholding their false charge of murder against him, Respondent.

Appellants quoted in reply two verses from the Oopdes Mala, a Book of the Shravuks, to the following effect," a troublesome " man, who disturbs Society by the ill use of offensive Wea- " pons, or insults Society (by the commission of any crime) is

" to

" to be expelled from company and Cast, like as angels do not " associate with Devils. A man who is a slanderer, and op- " pressor, and injures people, is a bad man, and ought to be " expelled from Society and never be looked upon."

Respondent expressed himself ready to be judged with Appellants by the Books of the Shravuks above quoted, or by the Dhurm Shastr, and asserted, in bar of Appellant's complaint of violation of their Rights, that he had been allowed to marry his eldest daughter between the time of the first Decree and filing his other Suit with consent of the whole Cast.

The following Report on the case was given by Mr. Advocate General Threipland, Reporter to the Sudur Udalut.

This case appears to me to be attended with considerable difficulty.

On grounds of publick policy nothing can be more obvious than that the jurisdiction which is exercised by Casts in this country, ought as little as possible to be interfered with. It is a power which experience does not prove to be liable to much abuse, and its proper exercise is of such eminent utility in the prevention of misconduct on the part of our native fellow subjects, that whatever tends to weaken its authority must be accounted an evil of considerable magnitude. The injustice done by the decree must therefore be flagrant indeed, before I should think it wise to overturn the deliberate decision of a numerous and and respectable Cast, or vindicate an individual member in setting its sentence at defiance.

That a person ought not to be expelled who is chargeable with no offence, is admitted by the Appellants. But then they affirm that this has not happened in the case of the Respondent. He certainly was charged with an offence of the most heinous description, and the sole question seems to be, whether his acquittal before the Court of Session is to be considered as so completely demonstrative of his innocence, that no room can be left for any one to believe him Guilty. Now

Now the affirmative of this proposition appears to be carrying the sentence of a Court of criminal Judicature a good deal further than it has any claim, or ought to make pretension to be carried. Indeed it often happens that the very Court which finds itself compelled to acquit, is impressed with a consciousness, only short of absolute conviction, of the Prisoner's guilt, and hence the celebrated phrase of "acquitted Felon" is that by which many, who escape the laws of their Country, may, after all, most properly be designed.

It is precisely in such cases that the benefits of an ulterior Cast Jurisdiction are most likely to be felt. By its means, Offenders, against whom there may not be sufficient proof to warrant a conviction which would subject them to the loss of their lives, may still be made amenable to penalties and deprivations, the dread of which cannot fail to operate with salutary influence, and are so far from being subversive of the authority of a regular Court, that they are rather to be viewed as coming in aid of that authority, and by making men anxious to avoid the appearance of guilt, cannot fail on many occasions to prevent the reality.

To consider such subsequent inflictions as a reproach to the Court which pronounced the sentence of acquittal, seems to be founded on a wrong impression as to what has just been stated, and in the mistaken notion that a Court of Law, by acquitting a man, necessarily vouches for his innocence. If it does not do this, if it only affirms that the evidence of guilt is not sufficient to warrant a sentence attended with consequences of a highly penal nature, it is no reflection on its decision to say that the evidence is sufficient to justify persons who may fairly take a greater latitude in judging, (and who ought to do so, if they would be of real use) in pronouncing a sentence of inferior severity.

I can easily conceive indeed that even an innocent man, whose conduct has been such as to create a grave suspicion of his having been guilty of the crime of murdering a near Relation, may be obnoxious to the prejudices of some Casts, and that they

they may not think it right to associate with him on the same footing as before. But if such be really the prejudice of their religion, if they think the members of their community should be like the wife of Cæsar, I should esteem it a very vain and hopeless task to combat such a zeal for purity with argument, and an injudicious, as well as oppressive, exercise of authority to punish it with fine and imprisonment.

The question in short is, whether Casts, in determining who are fit persons to continue of their respective Bodies, are compellable to see only with the eyes of a Court of Law, and to hear with its ears. If it were sound policy to endeavour to effect the abolition of all such native Jurisdiction, I should recommend this restraint being put upon them; but if their authority is to be maintained, I should advise their acts to be only called in question where they plainly proceed from revengeful or malicious motives, not where they are ascribable to a conscientious, even though it should be a mistaken, opinion of crime.

The former does not seem to be either asserted or insinuated in the present case, and to decide upon the latter, it would be necessary to peruse the proceedings which took place at the trial.

The Honorable the Governor in Council, if he thinks proper, may call for these; but perhaps *as* equitable a mode as any of determining the question will be by acceding to the proposal of the Appellants that a reference shall be made to the Cast in Guzerat, under the express condition, that their decision, as to the Respondent's right of re-admission, shall be binding and conclusive in all time coming.

(Signed) T. M. THREIPLAND,

Reporter.

Minute by the President.—I concur in the opinion of the Reporter as expressed in the last Paragraph of his very satisfactory

factory view of the case, and of the principles on which its decision ought to depend; and I am accordingly for an Instruction to the Provincial Court of Appeal to cause the reference proposed by the Appellants to be made to the Cast in Gojeerat, *under the express condition*, that their decision, as to the Respondent's right of re-admission, shall be finally conclusive and binding on the parties in the present suit. In this opinion Mr. Lechmere also agreed.

Minute by Mr. Rickards.—This is a case intimately connected with that decided in the Court of Appeal under date 9th March last, and I am of the opinion I then entertained, that the extent of injury done to the Respondent is not made out on the record, but left to be inferred; and the injury in this latter case is still more doubtful when we find it stated that the decree of expulsion from Cast, to which the Respondent has been subjected, does not affect his civil or religious rights, or any of his children or family.

Whilst a Punchait can have no right to excommunicate any member of society without ascertained crime, and whilst it would be impolitic to countenance the exercise of authority by Punchaits in opposition to, or contravention of, the regular decrees of our established Courts, (the evil of which might be incalculable) yet in cases which partake more of a moral than legal nature, and which are already, in the established order of things, subject to salutary and sufficient controul, I think it would be always advisable for our Courts not to interfere. This seems to be a case in point; no Court of Law can force an individual, or any number of individuals, to choose their own associates, and if the expulsion of Hurrukchund Motecchund amounts to nothing more (and these proceedings do not shew any thing more) than what we should call sending to coventry for a crime generally believed, but yet incapable of positive legal proof, I am of opinion the decrees of the lower Courts are severe, and even unnecessary. If the case contains any great injury, that injury should be made out.

Considered

Considered as a moral corrective, the power of expulsion from society, if it involves nothing more than disgrace, no other violation of personal or proprietary rights, and only exercised, as it generally is in this country, with prudence, may produce salutary consequences, and be operative to the benefit of that society in various cases beyond the proper cognizance of Courts of Justice; on the other hand it may be observed that the affirmation of the decrees of the lower Courts in this instance can never restore the Respondent to the society of those who are determined not to associate with them. I should therefore think the case a proper subject of Cast adjustment, and if hitherto only partially decided, that a more general selection of proper persons from the whole Cast in Guzerat and Bombay had better be made, and the matter be subject to their ultimate verdict. Indeed in our Courts complete satisfaction, even though he were entitled to it, may be utterly unattainable to the Respondent. All that Law can do is to enforce the fine, whilst from the Judicial proceedings already instituted, Hurrukchund may, it is probable, find that instead of attainment, he is still further than ever removed from the main and ultimate object of his wishes.

(Signed) R. RICKARDS.

Appellant's prayer for the case being referred to the decision of the Cast in Gojeerat was complied with, *under the express condition* that their decision as to the Respondent's right of readmission should be final and binding on the parties in this suit. A Precept for this purpose was issued to the Provincial Court, by the Sudur Udalut, handing up a copy of their Reporter's Report for the information of the Court of Appeal.

On the 30th July 1811, the answer to this precept forwarded the award of Mulookchund and the members of the Beesa Ooswal Cast of Banyans residing at Ahmudubad, to whom the decision had been referred.

It was directed to the Judge of Surat, in answer to his reference,

ence, and said " you mention that Hurrukchund Moteechund " was, before his trial, suspected of having been guilty of the mur- " der of his wife, but before the Judges of the Court of Session he " was tried and acquitted of the charge. The people of the " Cast at Surat, notwithstanding this acquittal, excommunica- " ted him," and ask, whether under such circumstances he ought, or ought not, to be readmitted into the Cast? As you mention that the people of the Cast of Surat have excommunicated him, it appears to be a dispute of the Cast; He must therefore satisfy them before his re-admittance, without which it cannot be allowed.

The Sudur Udalut at once affirmed the above award, thus reversing the Decrees of the Provincial and Zillah Courts, and decreeing repayment by Respondent of the Damages received by him, each party bearing their own Costs.

Geo. Brown, *Actg. Pres.* J. Abercrombie, J. Elphinston, Decree 4th Nov, 1811.

N° 10.

ATMARAM NURBHEERAM,.....APPELLANT,

VERSUS

BHUGWANDAS MOTEERAM,.....RESPONDENT.

APPELLANT, who resided in Bombay, filed this suit in the Surat Udalut on the 13th January 1809 by his Mokhtiyar Kuhandas Moteeram, to recover Rupees 800, the Share taken by Respondent in a Policy of Insurance executed by Respondent with three other persons in Appellant's interest in the Ship Cecilia, then at sea at the time of effecting the Policy.

Surat Udalut, S. Bourchier, *Assist. Judge*

Claim to recover from Respondent so much of a certain Policy of Insurance as he had taken to ensure Appellant's interest in the Ship Cecilia—Respondent's refusal to fulfil the Terms of the Policy defended on the grounds of

Appellant, it appeared, had an interest in the Ship Cecilia, Captain Skene, which Ship left Bombay for Calcutta in the month of February 1808. In the July following Appellant sent to his Broker Muyaram Mukundas, at Surat, to get an Insurance

the Insurance being fraudulent, since Appellant effected it at the usual rate, concealing from the Insurers the fact of the Ship's having been captured long before.

Courts held that the fraud was fully proved, and the claim was dismissed.

ance effected upon her, and insured for a Premium to be paid in ready money Surat currency against risque in the amount of Rupees 1,500 from the time of her weighing anchor from Bombay Harbour till her anchoring in the Bengal River. In the Policy, dated 1st Shravun Sood 1864 or 24th July 1808. The Insurers agreed to abide, in case of accident, by the rules of the printed English Policies, paying at the rate of 98 per Cent to Appellant through Muyaram Mukundas. Of this Policy Respondent took Rupees 800; Hurukchund Vachuldas Rupees 250; Raja Bhace Jumnadas Rupees 350; and Bhugwandas Moorardas Rupees 1,001. On the 10th December 1808 Appellant with a view to come upon Insurers for the amount of the Policy, made a Protest before a Notary Public, which he likewise verified by Oath, that the Ship Cecilia was taken on her voyage to Calcutta by the French Frigate Semillante, but that he was not confidently informed of it until the 13th October 1808, though the Report of her Capture was inserted in the Bombay Courier of the 13th August previous.

Respondent charged Appellant with fraud in effecting the Insurance, as knowing at the time of the Ship having been Captured. He allowed he underwrote the ship to the amount of Rupees 800 with Mayaram Mukundass and for Rupees 1,000 on another person's account, with Nana Bhaee Lal, another Broker, on their assuring him that the Cecilia he had heard of as having sailed in Magh, or February 1808, and being taken, was another vessel, this one being only about to sail in 10 or 12 days, or having just sailed. That Nana Bhace, on finding out the facts about the Cecilia, wrote an acquittance on the 1st Magh Sood 1865, or 15th January 1809 in Respondent's Books for the Rupees 1,000 he had put his name down for. He denied that the Premium was received in ready money, and called both the Brokers as witnesses. Muyaram Mukundas stated that being asked by Respondent to enquire particularly about the sailing of the Cecilia, he had been told by Appellant's Agent, that she had either sailed 10 or 12 days before, or was about to sail, and that upon

upon this statement Respondent signed the Policy and not before. Nana Bhaee Laldas stated that he got Respondent to underwrite the Cecilia for Rupees 1,000 on account of one Jugjeevun Khemchund, who neither remitted the Premium nor answered his letter, and on learning the fate of the Cecilia he allowed Respondent, who had till then not considered himself free from the obligation though he had not received the Premium, to withdraw his name from the Policy, and gave him an acquittance.

The Court demanded a certificate of the date of the ship's sailing from Bombay, instead of which Appellant produced a certifiate from Mr. Henshaw, attorney for Captain Skene, declaring that a letter, received by himself from Captain Skene communicating the capture of the Cecilia, brought, to the best of his knowledge, the first authentic account of her Capture. Eight Merchants named in the Margin also certified, that it is usual to insure Ships at the time at sea, and that the amount of Insurances effected some months after the Ship had been at sea are recoverable in case of loss, and it was well known that intelligence of the Capture of the Cecilia did not arrive till September, though she sailed in February. This certificate was dated 30th May 1809.

Hormuzjee Eduljee, Nowrozjee Ruttonjee, Poorshotum Soolseedass, Vondravundass Varydas, Nana Baee Laldass, Framjee Kawasjee, Muyaram Dyaram and Ruttonjee Gokooldass.

The Court thought there was an evident attempt at fraud by Appellant, from his concealing the true date of the vessel's sailing, and dismissed his suit with costs.

Decree, 7th June 1809.

Appellant's Mokhtar laid great stress on a passage in the letter he received from his principal who resided in Bombay, with the orders to insure the Cecilia, in which letter the fears entertained for the Ship as over the usual time were stated, but it did not appear he had shewn this letter to Respondent, as alledged. He also produced the opinion of Mr. Advocate General Threipland on a statement of his case as follows.

Court of Appeal, Sitting at Surat.

N. Crow, *Chief Judge.*
T. Day *3rd do.*
Decree 10th January 811.

" If the underwriters were duly apprized that the Ship had " sailed several months previous to the Policy being effected, ort

" if

" if nothing was said to lead them into a mistaken belief on that " subject, I think they are bound to pay the amount of their " several subscriptions."

10th January 1810.

(Signed) T. M. THEIRPLAND,

This the Court admitted was their own opinion, but as the contrary of the two points supposed in it, fully appeared on the trial in the lower Court, they concurred in the decree of the Assistant Judge, which was affirmed with costs.

Sudur Udalut. Geo. Brown, *Actg. Pres.* J. Abercrombie, *Comr. in Chief*, J. Elphinston, Decree 25th March 1812.

The principal Atmaram Nurbheeram appeared in person to carry on this Appeal. Judges of the Sudur Udalut were unanimously of opinion that the fraud, held by the lower Courts to have been committed by Appellant, in not having fairly stated the risk, with his own doubts of the Ship's safety, to the Insurers, was fully sustained by the proceedings. For it was clear from the premium paid being at the ordinary rate that Appellant's Agent could not have informed them truly, and though he might have an action against the Broker, (whom Appellant now accused of giving false evidence,) none could be upheld against Respondent and the others. The Court affirmed the decisions in the latter's favor, with an amendment that he should repay to Appellant the sum received as Premium from his Broker.

N°. 11.

RAEECHUND POORSHOTUM.....APPELLANT,

VERSUS

MOOLLA MUHMOOD HASHUM.....RESPONDENT.

Surat Udalut No. 458 of 1809, S. Bourchier, *Assist. Judge.*

THIS Suit was laid in the Udalut on the 24th February 1809, to recover the sum of Rupees 1,562-3-25 Principal, and Rupees 95-1-37½ Interest, on four Respondentia Bonds, passed by Respondent's

pondent's Father Moolla Hashûm to Appellant on the 5th Posh Vud A. S. 1864 or 18th January A. D. 1808.

Suit filed against Respt. as Heir to his deceased Father, to recover from him the amount of four Respondentia Bonds passed by the Father to Appellant, for money advanced on a trading Voyage to the Maldives. Claim clearly proved and afterwards confessed by Respondent, to be a collusive one, made with a view to defraud other Creditors of Respondent's Father, out of the Assets left.

Dismissed in all the Courts with an order by the Sudur Udalut to prosecute Appellant for forgoing the Bonds under which he sued.

Appellant stated that he in the above year lent the sum of Rupees 1,562:3:25 on the four Bonds exhibited by him in this suit, to the deceased Moolla Hashum Kasum and his son Respondent Muhmood who, purchasing goods with them, made a trading Voyage to the Maldives; that on their return up the Coast with other merchandize Muhmood remained at Mangalore and Hashum died on his way on to Surat. Appellant landed the goods at the Surat Custom House, and as the surviving relations of Hashum deceased and others were trying to get possession of these goods, he sued to have delivery of them made to himself.

Respondent said that this statement was perfectly true, and the money justly due to Appellant upon the Bonds, but as four other persons had a further claim on him, Respondent, for Rupees 615, he prayed the Court to sell the goods and appropriate the proceeds in any way it thought proper.

The Court on the 20th April called on the suit, and finding that the deceased left other property in Surat, observed that it had nothing to do but decree the amount claimed by Appellant, and acknowledged by Respondent, to the former, out of the proceeds of any property he should point out. But that very day on investigating the merits of the next number on the File, (being that of)

MYARAM DYARAM on the.....
part of DYARAM LALDAS..... } *PLAINTIFF,*

VERSUS

The Estate of MOOLLA HASHUM .....DEFENDANT,

Surat Udalut No. 459 of 1809.
S. Bouchier, *Assist. Judge.*

laid to recover Rupees 1,140-0-20: the amount of a Bond dated A. S. 1863 or A. D. 1808, by Moolla Hashum to the Plantiff's house for Rupees 943-1-72 with interest due on it Rupees 196-2-18, the Court saw reason to suspect that the former

mer suit Number 458, was filed from collusion between the parties in it, to defraud the real Creditors of the Estate, of their just dues. It was admitted by Muhmood, after a great deal of trouble, that the signature to the account in the Book exhibited by Plaintiff in support of the Bond, was that of his Father, but he thought it must have been adjusted by him before his last voyage. The Plaintiff then gave such reasons for suspecting collusion between the parties in the suit No. 458, that the Assistant Judge re-examined the four Bonds in that suit, and was satisfied of their being Forgeries made to support it, from their not being at all similar in the signatures to that acknowledged by Defendant in the Plaintiff's Book. Defendant then shifted his ground, denied that signature, and acknowledged the Bond exhibited by Plaintiff to bear his Father's real signature. The Defendant was punished by a fine at the moment for this prevarication, but the witnesses to the Bond being also called for, fully established its authenticity, and a Decree was passed in favor of Plaintiff in No. 459.

Decree 20th April 1809.

The Court at the same time revising its decision in No. 458, found that the Bonds exhibited by Appellant, as passed to him by Hashum, were not authentic, being unattested and quite fresh and new in appearance, and supposed that as Appellant might have some claims against the estate, so he, from fear that the other Bond Creditors would establish their prior right to shares of the proceeds of the estate, then in the Custom House, probably got Respondent to acknowledge these Bonds, and as there was a strong presumption of collusion, particularly by their being negociated by a Broker, which from the general bad Character of these people threw still more suspicion on the transaction, the Bonds were rejected and the suit dismissed with costs.

Decree 26th April 1809.

Court of Appeal sitting at Surat. No. 94. 1809. N. Crow, *1st Judge*, Thos. Day, *3d Judge*, Decree 16th January 1811.

The provincial Court concurred in the view taken of this case by the Assistant Judge, and dismissed the Appeal with costs.

Appellant

Sudur Udalut,
Sir E. Nepean,
President.
G. Brown,
J. Elphinston,

Appellant explained more fully the nature of his transactions with Respondent and his Father, who, he said, came to him with a Broker named Hemchund Ruttunchund, represented the bad state of their credit in the Bazar, and got him to agree to pay, through the Broker, for goods they wanted to take up from the Merchants, and for amount of which they were to grant him Respondentia Bonds. That he actually paid the money to the Merchants, and took the Respondentia Bonds exhibited by him, on the voyage to and from the Maldives.

Respondent stated that on arrival at Surat of the goods from the Maldives, when he was down the Coast, Dyaram Laldas procured an order of Court, and attached them. That Respondent's Broker Hemchund Ruttunchund mentioned to one of Respondent's people the risk they ran, and with him made the contrivance of Bonds, instituting a suit against Respondent, whom, on his arrival to take charge of his Father's effects, he instructed in their trick and persuaded to assist, by signing the Bonds, supporting them in Court, and denying that on which Dyaram founded his claim. Respondent confessed that Hemchund was the complainant under the name of Raeechund, and writer of the notes, and that finding his schemes unsuccessful, and Respondent threatening him, he had passed a Farighkhut to him, Respondent, under Raeechund's name.

Appellant denied the whole of this story, called for a comparison of the Bonds with other writing of the deceased, and declared he had witnesses who could prove having seen the Bonds before the Respondent went to the Maldives, whilst the Farighkhut was only taken with a view to strengthen his claim, as being admitted by Respondent.

The Court remanded the suit to Surat, to ascertain, 1st, To what Merchants Appellant paid the money borrowed by Respondent; 2dly, By what persons the Bonds were seen at the date of their alleged execution, before Respondent's departure with his Father for the Maldives; 3dly, The actual existence of the Farighkhut;

Farighkhut; 4th, Further proof, if Appellant had it, of the signature being really that of Moolla Hashum. On all these points Appellant failed. 1st, The Merchants were paid by Hemchund; 2d, The sight of the Bonds was not spoken to by one person; 3d, The Farighkhut was exhibited, and proved to be a general release; and 4th, Papers exhibited by Appellant were on comparision with others signed by Hashum found to bear no resemblance to them.

Decree 9th June 1813.

The Sudur Udalut therefore affirmed the decree of the Provincial Court, dismissing the Appeal and directing the prosecution before the Sessions of Raeechund Poorshotum and of Hemchund Ruttunchund, the Broker, for Forgery.

N°. 12.

NAGUR TRIKUM.....Appellant,

VERSUS

BHAEECHUND NUTHOO.....Respondent,

Surat Udalut 8, Bourchier, *Asst. Judge.*

TO recover Rupees 3,011, interest due as follows—In 1802, A. D. Appellant prosecuted *Respondent's Father, his elder Brother Nuthoo Trikum*, for his share of their patrimony, and the claim was referred to Arbitration. The Arbitrators, as usual in such cases, taking from Appellant a Blank Deed of release to be filled up by them, gave a decision to this effect, "that Nuthoo "the then Defendant,) in consideration of Appellant having "given up to him all his share of their Father's business, and the "outstanding Debts and Credits of the concern, and all further "profit from it, should pay down Rupees 10,100. to be lodged "in the name of Appellant's Son in the hands of a Shroff called "Lulloo Gungadas, the Interest of it being applied to Ap-"pellant's maintenance, and the Brothers then dividing in equal "shares the Household Furniture, Jewels and Effects." This award was made a decree of Court, and ordered to be carried into effect, but Nuthoo, up to his death about two years before, having

Claim for the interest of part of a sum awarded about seven years ago to Appellant from his Brother, Respondent's Father, but never paid up by the Father nor by the Son, Respondent till very lately.

Respondent held by the Zilla Court justly liable to make good to Appellant the loss of interest caused by his Fathers and his own neglect.

This decision reversed by the Provincial

having only paid Rupees 5,000, of the Cash and none of the effects &c. awarded, Appellant petitioned, and on the 17th November 1809, got a Decree against the present Respondent for the balance 5,100, which was paid, but Appellant thinking himself entitled to interest upon the principal from the date of the award, brought this action to recover it.

Court on the grounds that Appellant had tacitly acquiesced in the loss, by not seeking redress through the Court which had confirmed the award, for non-performance of its conditions.

But the Sudur Udalut conceived Repondent bound in Equity to make good the loss Appellant had suffered, and decreed the sum sued for accordingly.

Respondent admitted the arbitration, but alleged that Appellant distrusting his (Respondent's) Father, took security for the whole amount, of which Rupees 5000 were paid 15 days after date of the decree, when Appellant executed a Farighkhut, or Release in full, for Rupees 10,100 and filed a Razee Nama absolving his Father from further responsibility, and that 7 years had now elapsed, without Appellant claiming any thing from him, from the Security, or from his Father, who died only two years before. He admitted however that the balance had been lately paid in the Udalut, but Appellant would not receive it without interest, which he was not inclined to pay.

The Court observed that it was usual for parties in arbitration disputes to deposit with the arbitrators a mutual Release, leaving blank spaces to be filled in by them when they had made their award, and that the Payment of the balance cash lately, was a proof the Release mentioned was one of this kind, and not meant as a receipt in full whilst the Razee Nama was merely the usual acknowledgment by Appellant that he was satisfied with the award. The Court held, that as Respondent had neglected to deposit the amount Principal with Lulloo Gungadas, agreeably to the award, and had only lately paid it into Court, thereby depriving Appellant of the use of it, he was justly liable for the interest, which was decreed to Appellant as sued for. Costs to be borne by Respondent.

Decree 11th Januury 1810

Respondent in appealing this Suit, further stated that at the time the award was drawn up, his Father gave to Appellant's Arbitrator a note in favor of Appellant's son for the sum awarded

Court of Appeal Sitting at Surat.
N. Crow, *Chief Judge.*
T. Day, 2*d do.*
Decree 10th July 1811.

ed, Rupees 10,100, and that the exchange of this note for Appellant's Farighkhut took place before the Judge.

The Provincial Court observed that 7 years had elapsed from the time of the decree, (and two of that seven since Nuthoo the Father's death) without Appellant claiming any thing through the Court. Taking the verbal opinion of their Law Officers, whether Appellant was entitled to interest, which by his allowing the principal to lie over, had nearly doubled it, the Law Officers gave answer against Appellant, and the decree of the Assistant Judge was accordingly reversed in favor of Respondent with Costs by Appellant.

Sudur Udalut
G. Brown,
Actg. Pres.
Sir E. Nepean,
President.
J. Abercrombie,
J. Elphinston,
Decree 26th May 1813.

The Sudur Udalut could not concur with the Provincial Court in viewing this Suit as one to be decided according to the Hindoo Law, but were of opinion that it was rather a point in Equity, whether the Respondent withholding the sum of Rupees 5,100 and other effects due to Appellant for 7 years, though said to have been frequently demanded, had not rendered himself justly liable for the interest, which he himself had probably enjoyed by using the money with his own Capital in trade. The Court was aware that Appellant himself had not very strictly conformed to the award, when he received Rupees 5,000 Cash into his own hands, but concurred with the Zilla Judge in his opinion of the Justice of Appellant's claim, and affirmed his decision upon it. On thus reversing the decree of the Provincial Court, it was resolved, that Respondent pay Appellant interest at 9 per Cent per annum upon the sum of Rupees 5,100 from the date of the award, to that of its being paid into Court by him, and that this sum of Rs. 5,100, with the first payment Rupees 5,000, making the whole sum originally awarded to Appellant, be invested with some approved Shroff in the name of Appellant's Son, interest of it to be, as originally settled, applied to Appellant's maintenance.

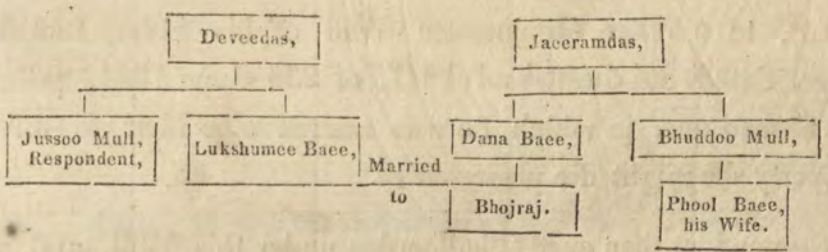
N°. 13.

CHOONEELAL on the part of DUYALDAS, Nephew and Heir of THAKOORDAS MEGHRAJ,..... APPELLANT,

VERSUS

JUSSOO MULL DEVEEDAS,..... RESPONDENT.

RESPONDENT originally filed the suit on the 31st July 1801, to recover two Houses, some Jewels, Books, Papers, and Images of certain Gods, total Value Rupees 1,000 bequeathed to him by the will of his own Sister Lukshumee Baee, but seized on and unjustly withheld by Appellant's Uncle, Thakoordas Meghraj. The following Genealogy was exhibited by Respondent.



It appeared that Phool Baee, on the 3d Poush Vud 1843, or A. D. 1787, in her will constituted Appellant's Uncle her family Priest the Executor, and principal Heir to the residue of her husband's property, being a House, and other valuables, after deducting such portion as she gave away in Legacies, and half the value of the House, which she desired should be appropriated to pay her funeral expenses, bequeathing the remainder of all her property to Thakoordas. He after her death, proved the Will in the Mayor's Court of Bombay and obtained Letters of Administration on the 10th of September 1793. He mortgaged the Houses to Chooneelal, for Rupees 2,100 to defray the funeral expenses, and gave over some ornaments which were bequeathed in Phool Baee's Will to Lukshumee Baee, who

Surat Udalut S. Bourchier, *Judge.*
Decree 2d Nov. 1809.

Suit filed under a Will of Plaintiff's (Respondent's) Sister in his favor, to oblige Defendant, (Appellant's uncle) to surrender the property left by the Aunt of that Sister's husband, and seized on by Defendant under pretence of its being devised to him by Will of the Aunt as a religious Gift to him, her family Priest for the good of her Soul.

All the Courts agreed in his allowing the Aunt's right to will away property devolving to her Nephew's Widow, and in admitting the superior right of Respondent to it.

Defendant dying during the progress of the Suit in the Zilla Court, & having in the mean time made away with all the property except the house, which he had mortgaged, that Court, and the others in Appeal, declared the mortgage ille-

gal, and ordered restoration of the house to Respondent.

who gave Thakoordas a receipt for them, dated 8 days after the date of the Will.

Lukshumee Baee dying in 1794, her Brother, Respondent, went to Bombay 15 months after it happened, and applied for Letters of Administration to a Will of her's, in Persian, signed and sealed by the Nuwab of Surat as authenticated by him; Lukshum Baee therein bequeathed to Respondent the property of Phool Baee, above, which she claimed to do, as belonging to her by right of inheritance.

Thakoordas appeared in the Mayor's Court to oppose the granting of Letters of Administration, and the Nuwab having declared his ignorance, when he authenticated this Will, of the existence of the other in favor of Thakoordas, the Application of Respondent was rejected. However some months after, he succeeded in obtaining letters of Administration from the Recorder's Court, to another Goojurattee Will of his Sister Lukshum Baee, dated 8th Jesht Vud 1847, or 23d June 1791, prior to the former one, in which he was named sole Heir to all the property she might die possessed of.

Respondent then sued Thakoordas under this Will, and produced a Report by 40 or 50 of the Cast in his favor to a former Chief of Surat, and an arbitration Bond entered into by himself and Thakoordas in 1791, binding themselves, under a penalty of Rupees 11,000, to abide by the decision of two persons named Kaseeram Balkrishn and Lalaram Narayun. Thakoordas opposed him with the Will of Phool Baee, and the letter of Administration to it, granted him by the Mayor's Court.

Respondent afterwards produced the award of the above arbitrators, setting aside Phool Baee's Will, and confirming that of Luskshum Baee in his favor.

Thakoordas did not then dispute the powers of the Arbitrators, or their award, but produced a Report dated 1844 (or 1788,

1788, A. D.) from 38 persons in favor of his right. The arbitrators attested their award before the Court, when, and not before, Thakoordas took objection to it, as lately made up, though bearing date 1790, and asked why it was not produced in Bombay? Respondent answered that probate of a Will, and no claim of right, was there agitated. Before decision of this suit Thakoordas died, leaving his Nephew Duyaldas heir to his property, all the moveable part of it having been removed by Thakoordas to another country before his death, and leaving in Surat only one House, inhabited by a Tenant put in by Chooneelal, to whom it stood mortgaged.

In coming to a decision, the Court considered that the Will of Phool-Baee in favour of Thakoordas was contrary to the Shastr and therefore illegal, because it made over property belonging to the Testatrix's family, to a total stranger, and a man of another and an inferior Cast. The Court also thought the Mayor's Court had exceeded its powers, in confirming, and granting Letters of Administration for this Will, when the parties were inhabitants of, and the property situated in, Surat, a place entirely out of its Jurisdiction. That the mortgage, under such authority, of Phool-Baee's House to Chooneelal by Thakoordas could not hold good in opposition to the claim of Respondent, to whom it was bequeathed, by the real Heir. It was therefore decreed, that Respondent be put in possession of the said House, and of all other property he could point out formerly belonging to Phool-Baee, the costs of suit being recovered by him from any tangible estate of Thakoordas, as the Nephew Duyaldas not having inherited either his Uncle's or Phool-Baee's property, could not be held liable in consequence for costs.

Court of Appeal, N. Crow, *Chief Judge.* Thos. Day, *3d Ditto,* Decree 8th June 1811.

The mortgagee, as his interests were chiefly affected by this cause, prosecuted the Appeal on the part of the Heir of the deceased Thakoordas. He advanced no new matter in support of his case, except that Thakoordas, being the family priest of Phool-Baee, had a right to inherit her property as bequeathed to him,

him, her spiritual Teacher, for the good of her Soul. This was followed by no proof whatever, and the Court fully concurring in the reasons given for the decision of the lower Court, dismissed the Appeal.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, J. Elphinston, Decree 9th June 1813.

The Sudur Udalut put the following Question to their Law Officer, "Can a widow as Phool-Baee bequeath by Will the "property inherited by her from her husband, to her family "priest, to the exclusion of the widow of her late husband's "Nephew, then living?" He replied, "The widow, without the "consent of her Nephew's widow, cannot make a gift of land-"ed property to her priest." (1)

The Court observed, that the arbitration, established, as it was, without any thing being shewn by Thakoordas against it, furnished sufficient grounds for affirming the former Decrees, whilst the claim of Respondent in right of his Sister, and the want of all relationship between Thakoordas and the family, would of themselves have afforded good grounds for a decision in Respondent's favor. They did not consider Choonee-lal, though his was a hard case, entitled, as Mortgagee, to keep Respondent out of possession merely because Respondent's house had been illegally mortgaged to him by another, and therefore affirmed the decrees of the lower and Provincial Courts, decreeing possession of the house to Respondent accordingly. No. 14.

(1) In the Dayu Vibhagu of the Mayookh it is said, on the subject of a widow's succession to the Estate of her husband deceased without male Issue. "As for the Text of Brihuspuli, ("Whatever property a man possesses of every kind after division, whether "mortgaged or other, that the wife, however married, shall enjoy, after the death of her "husband, with the exception of fixed property. Even if virtuous, and if partition have been "made, a woman is not fit to enjoy real property") it, according to the Smriti Chundrika, refers to a wife who has not (even) a daughter; for a woman having a daughter obtains fixed property also. Madhuvu again considers it to relate to the prohibition of sale or other transfer of real property, by a widow without concurrence of the heirs. And whereas Katyayunu says, "A virtuous Matron, being a Widow, shall take her husband's wealth "during her life, but she shall have no property therein as regards the Power of Gift, "mortgage, or sale," this prohibition relates to the Gift of money &c. to the Bundee, "Charun, and other (Cheats.) But gift for a purpose not mercenary, and mortgage, &c. "suitable to that purpose, may be made, by reason that it is sanctioned by the Texts quoted "in a former part." The Vyuvustha is founded on the law quoted in Note (1) to Case No. 15. Vide Vyuvusthas also in Case No. 41.

No. 14.

HUREE BHAEE NANA and SON,....
BHUGOO,..... } *APPELLANTS,*

VERSUS

NUTHOO KOOBER,.....RESPONDENT.

THE parties in this suit, filed on the 24th November 1809, in the Zilla Court, all belonged to the Lewa Koonbee Cast, Respondent suing Appellants for Rupees 1,183, damages for breach by them of a contract duly entered into for the marriage of Appellant Bhugoo, with Respondent's daughter Nundee.

Sudur Udalut S. Bourchier, *Assist. Judge.* Decree 2d Feb. 1810. Lewa Koonbee Cast. Respondent betrothed his daughter to Appellant Bhugoo, who having lately contracted a Second marriage, or Natra, with another Woman, Respondent came forward to compel Appellant, either to consent to a Divorce from his daughter or to dissolve the Natra, and admit his daughter to her rights. Defence, that Appellant Bhugoo was full grown, and Respondent's daughter not arrived at years of puberty, and that under those circumstances Natra was permitted by the Rules of their Cast. Zilla Court declared Appellant borne

Respondent stated that he was induced out of pure friendship for Appellant Huree Bhaee to betroth his own daughter Nundee to his Son, the Appellant, when no other person of the Cast would do it, Bhugoo being then 14 years of age and Nundee only 6 years old. He made Bhugoo a present of Rupees 250 for clothes and ornaments, and expended Rupees 1,300 in an entertainment to the Cast on the occasion. His daughter was now of the age of 11 years, but Appellant Huree Bhaee, instead of waiting for her arriving at years of puberty, had contracted his son by the rite called Natra, (1) to another Girl, and thus destroyed for ever the peace of his daughter, who was free from all mental or bodily defects, and of too tender an age to have been guilty of any fault, the only reasons by which Appellant would be warranted in breaking off the match. He therefore

(1) It must be observed, that Natra does not properly apply to the second marriage of a man, (which is termed in the Shastr Udhivinn), but when proposed in a question to the Law Officers is always by them understood as referring solely to a woman marrying again after death of her first husband, or to the other kind of Natra when, after a man and wife have performed the ceremony of divorce by tearing some article of apparel between them, the wife afterwards marries another man. A woman's marriage with another man, in the event of her first betrothed husband dying between the time of contract and the marriage ceremony, does not come under the denomination of Natra. The use of the term here therefore is improper, unless Bhugoo's second wife had been married before.

out by the Shastr, and rules of Cast, in contracting Natra, and dismissed the claim for a Divorce.

Provincial Court, under the opinion of their Law Officer, pronounced a sentence of Divorce.

The Sudur Udalut having consulted their Law Officer, and obtained further evidence from the Cast both in Bombay and Goojurat, annulled the sentence of Divorce, and affirmed the first decision by the Zilla Court.

therefore sued for damages for the injury his Character had suffered among the Cast, and either for a Decree pronouncing a Divorce between Appellant Bhugoo and his daughter, or for one annulling the second marriage, and declaring his daughter fully entitled to all her rights. Appellant Huree Bhaee said that so far from none of the Cast being willing to marry their daughter to his son, Respondent had by importunity got him to break off a match that was in progress with the Child of one Poorshotum, in order to effect this Contract. He declared that it was common in the Cast to have two wives, and that he brought about the second marriage, called Natra, because Respondent's daughter was of the tender age of 11 years and of small stature, and his son being full grown, stout, and 21 years of age, it was the only way to keep him virtuous, and prevent his ruining his fortune, character, and constitution. His Son was however ready to maintain his wife Nundee, in Food and Raiment, and would not consent to surrender, by a Divorce, the hope he had a right to entertain of a family by her hereafter. He accused Respondent of a desire to keep the ornaments he had received in dower, and to make something by contracting his daughter with some other person in Natra, but said they were resolved not to consent to the Divorce, and prayed for a reference to the Cast, on the point at issue.

The Court called Kevul Gokool, and Amechund Jugjeevun, the Patels of the Cast, and ordered them to ascertain from four of the most respectable Members of the Surat Sect, and four of the Ahmudabad Sect (Patel Pranwullubh Patuk,) whether a man, having a Wife 11 years of age, could marry another, and whether the Parents of the first Wife could then claim a Divorce between their daughter, and her husband, agreeably to the Rules of the Cast.

The answer, dated 12th Posh Vud A.S. 1866, or 1st February 1810, and signed by Sixty-six Members of both Sects or Schisms, was to the following effect, " A man who has a Wife only 11 years,

" years of age, can take unto himself another by the ceremony " called Natra. If the Parents of the first Wife wish for a Divorce " for their daughter, it can be only effected with the consent of " both Families. This is the Rule in our Cast. The Children " can neither understand nor enter into the disputes of their Pa- " rents in such cases." The paper concluded with a request that such second Marriage might not be allowed in future without the Sanction of the Government Authority.

On Respondent's objecting to this Report, as contrary to the real opinion of the Majority of the Cast, particularly of the superior or Ahmudabad Sect, and made up by the friend of Appellants, the latter gave in Nine Examples of second Marriages to support the above opinion, and which Respondent acknowledged, but said good reasons must be shewn for it. Appellant urged that his own reasons were most forcible.

Manukchund Premchund, Patel, Nihalchund Shumbhoodass, Nihalchund Lalchund, Vundravun Nagur, Hurree Bhace Juvehur, Behchur Dyaljee Gooroo, Manukchund Paruk, Bhika Wullubh, Moolchund Munaohur.

The Court finding Appellant's conduct warranted by the Rules of the Cast and Laws of the Shastr, could not grant Respondent either a Divorce for his daughter, or an order for annulling the Natra contracted by Appellant Bhugoo with the other woman and dismissed the Suit with Costs.

Respondent Nuthoo Koobeer in his Petition to the Court of Appeal pleaded that the second marriage or Natra ought to be dissolved because the Girl was young and would interfere with the first Marriage by bearing Children; he also declared that when the Sixty-six Members of the Cast signed the Report on which his suit in the lower Court was dismissed, fifteen hundred had given a contrary opinion.

Court of Appeal, Sitting at Surat.
N. Crow, *Chief Judge.*
T. Day, *Actg. 2d do.*
Decree 24th July 1811.

The Court referred this cause to their Shastrees, who, after inquiring among the Cast, and examining the Report of the Members of each party, observed that " the custom of taking in " marriage a second Wife existed in the Cast, but that some " cause must be assigned for doing it; a few instances to be sure " like the present, of its being caused by non-age of the first

" wife,

" wife, were forthcoming; yet still in some of them a Divorce " from the first wife had previously taken place, whereas Ap- " pellants would not hear of this, which was not right, and " as no happiness in future could be expected from the enmity " at present subsisting, Appellant Huree Bhaee, agreeably to " the Shastr, ought to be obliged to dissolve the first marriage, " because he had acted improperly in marrying his Son to a " second Wife." They stated verbally, that Nundee should keep the Pulla, or Dowry, she had received, in recompence for the injury sustained. Of this opinion the Court approved, and pronounced sentence of Divorce accordingly between Respondent's daughter Nundee, and Appellant Bughoo, decreeing possession of the Pulla to be Nundee.

Appellants petitioned on the general merits, for a reversal of the Court of Appeal's Decree.

Sudur Udalut. SirE Nepean, *President.* G. Brown. J. Elphinston, A. Bell, *(Prov. Member.)*

The Sudur Udalut directed Vinaik Balkrishn, the Pundit of the Court, to obtain answers to certain Questions drawn up by the Court, from the Members of the Lewa Koonbee Cast in Bombay, and lay them before it, with his own exposition of the Shastr, on the points referred to in them. The following was the result.

Question 1st.

Can a person, having already married a Wife under 11 years of age, but without mental or bodily defect, marry a second Wife, on the grounds of the small stature, and tender age of the first?

Answer of the Cast.

It is not the custom in our Cast, to send a Girl of 11 years of age to her husband's house, and unless she has been sent there, her Husband cannot marry another.

Shastree's Answer.

If a man already married to one Woman, wish to marry another for the purpose of cohabitation, he may do it. (2) If he

(2) That a man may have more wives than one, is shewn by the words of Yagnyuwulkyee, Mit First Book, leaf 9th, page 2nd, line 1st. " One who drinks inebriating liquors, who " is

he be wealthy, he must give the first Wife a sufficient maintenance, if she lives apart from him; or he may keep them both, supplying them with proper food and raiment, according to his ability. If he repudiates one of them, he must give her one third of his property. (3)

Question 2d.

If he can, may the first Wife claim a divorce from her husband in consequence of the second marriage, or demand a dissolution of that second marriage?

Answer of the Cast.

If there be no bodily defect in the first Wife, but the husband in consequence of some quarrel between their relations, marry another, he may allow the first Wife to divorce, and he should repay the expenses incurred by her father, but the second Wife cannot get a divorce without the husband's consent.

Shastree's Answer.

If a man who has already one Wife marry another, the first Wife can *not* claim a divorce from her husband, and no one can grant this divorce. (4)

Question 3d.

If such divorce, or separation, be allowed during the life of the second Wife, or whilst she may continue to live with the husband, may he, on decease, or putting away from him, of the second, again claim the first, as his Wife?

Answer of the Cast.

If, after being sent to her husband's house the first Wife and her

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" is incurably diseased, who is quarrelsome or barren, who wastes his wealth, who speaks " unkindly, who brings forth only daughters, may be superseded by another wife, and so " may she who manifests hatred for her husband." Cole. Dig. 2nd. 418.

(3) Mit. First Book, leaf 9th, page 2nd, line 10th, Yagnyuwalkyee. " He who forsakes a " wife, though obedient to his commands, diligent in household management, mother of an " excellent son, and speaking kindly, shall be compelled to pay the third part of his wealth, " or if poor, to provide a maintenance for that wife." Cole. Dig. 2nd. 420-21.

(4) Munnco 9th, v. 79 " But she who is averse from a mad husband, or a deadly sinner, " or an eunuch, or one without manly strength, or one afflicted with such maladies as " punish crimes, must neither be deserted nor stripped of her property." Cole. Dig. 2nd. 412—13. Bhagvuta Poorana, Vishnoo, " If a man be dissolute, unfortunate, aged, in- " sane, diseased, whether a beggar or a rich man, yet may not a wife separate from such a " husband." Munnoo 9th, v. 2nd. " Day and night must women be kept by their protectors in " a state of dependence, but in lawful and innocent recreations, though rather addicted to " them, they may be left to their own disposal." Vide Cole Dig. 2nd. 379, where a different Construction is given to the text.

her husband do not agree, and she thereupon get from him a house, and separate maintenance, then, on the decease or putting away of the second Wife, he may take the first again, on satisfying her. But if the first Wife has not been sent to her husband's, or if the husband, without allowing her a separate maintenance, marry another, and a divorce be granted to the first Wife at the instance of her father, either by the Cast or the Magistrate, then they cannot go and live together again.

Shastree's Answer.

A married wife must remain with her husband for life. She cannot obtain a Divorce, and a husband, after keeping a blameless wife on a separate maintenance, may again bring her back.

Question 4th.

In the event of the divorce being allowable, can the first, or divorced, wife retain the Dowry, whether Ornaments or other property given by her Relatives on the occasion of the marriage?

Answer of the Cast.

If the Wife has not been sent to the husband's, and he marry another, then he should give her ornaments and the expenses incurred. Also if the husband have no bodily defect and his Wife's father wish for a divorce, then the Ornaments and every thing given her by him to wear on her person, should be returned.

Shastree's Answer.

Ornaments given to a wife at her marriage belong to her, (5) and those which have been given to the husband belong to him. (6) The Wife cannot obtain a divorce.

Do

(5) Mit. Second Book, 61st leaf, 1 Page, 4th line, "What is given to women at the "time of their marriage near the nuptial fire, is celebrated by the wise as women's proper- "ty, bestowed before the nuptial fire. That again which a woman receives whilst she is con- "ducted from her father's house to her husband's dwelling is instanced as the property of a "woman, under the name of Gift presented in the bridal procession. Whatever has been "given to her through affection by her mother-in-law, or by her father-in-law, or has been "offered to her as a token of respect, is denominated an affectionate present—That which is "received by a married woman or by a maiden in the house of her husband or of her father, "from her brother or from her parents is termed a kind gift." Cole. Mit. 366.

(6) Munnoo 9th, V. 206, speaking of things not divisible, says "Wealth however, acquir- "ed by learning, belongs exclusively to any one of them who acquired it; so does any thing "given by a friend, received (at or) on account of marriage, or presented as a mark of res- "pect to a guest." The Mit. second Book, leaf 48th, page 2d, line 5th, declares the same

Cole,

Question 5th.

Do any and what differences exist in the usages of the Members of the Cast at Bombay compared with those of the other members of the Cast residing at Surat and Ahmudabad? and do any exist between the usages at those two places?

Answer of the Cast.

There is no difference in the usages of the Cast at Bombay, Ahmudabad, and Surat. What we have stated is agreeable to the usages in Goojurat, the country of the whole Cast.

Shastree's Answers.

The custom of the Cast, from their Report, appears to be the same at all three places, and though these do not (in this instance) agree with our Shastr, yet the Shastr also commands that the local usages of Cast shall be respected. (7)

For the further elucidation of this Suit, the Sudur Udalut issued a Precept to the Judge of Kaira enclosing the following statement of the case, to which he was ordered to obtain an answer from the principal Members of the Cast.

Case.

A Girl of the Koonbee Cast was married at the age of six to a husband some years older than herself, but was never sent to her husband's house, nor was the marriage consummated. The husband, on his coming to the age of puberty, married another wife for the sake of cohabitation, the first wife being at the time of his second marriage only 11 years of age, but having neither mental nor bodily defect. The second Wife is since dead. Can the father of the first demand a divorce on behalf of his daughter, either by the ancient and established usage and Custom of the Cast, or by the Laws of the Shastr? and can the Court pronounce sentence of such divorce according to Law or the Custom of the Cast?

The answers were as follows.

According

Cole, Mit. 268. The commentator on Munnoo comes nearer to the point by explaining the words used in the Text, "Madhoo Purkik" to mean, "what is obtained by the Bridegroom at "the time of giving him the Mudhoo Purk, or hymeneal offerings of Honey mixed with "Buttermilk and Ghee."

(7) Muyookhu Vyuvuharu Matrika Prukurnu, Brushuspute, "Let all Rules, of the "Country, Cast, and People, that have been derived and preserved from ancient times, be "still preserved in the same way, for in default the people will rise in rebellion."

(From Kaira.) According to the ancient Custom of the Cast, a man is allowed to wed four Wives. Should he be unable to maintain equal harmony among all, as with one, he may, if he please, allow them a separate maintenance, but is not obliged, at the instance of their fathers, to divorce any of them. If he be inclined to do so of his own free will, he then may execute a writing of Divorce to the father of such Wife, without which no act of Repudiation can be held valid, as by the Rule of our Cast whether the second Wife be alive or dead, the first marriage cannot be dissolved without consent of the husband, the second Wife's being dead can make no alteration in our opinion.

From Nuriad) In answer to your Question we state that no repudiation is practised among our Cast, and *we can make no distinction, respecting the second Wife being dead*, because *there is* no such Custom as Repudiation practised among us.

(From Kusba Dhalka, and Villages Chullora and Bhat. A Husband of the Koonbee Cast, during his life, according to the Rules of the Shastr, can divorce his Wife at his own pleasure, until then, it is illegal for the Wife to go and marry another husband, for no one can have any control over her. By the usage of the Koonbee Cast, a Woman is only allowed to marry another after the death of her first husband. Among the Pateedars, the Widow of a weathly and respectable person cannot remarry, but must remain in Widowhood. Pateedars never consent to dissolve marriages, but common Koonbees in the event of a disagreement between them and their wives, may divorce. No forcible attempt to repudiate would be held good in either of these classes. If a Wife is once rejected by her husband, he cannot by right claim her again. These are the Customs of the Levas.

(From Moondah.) There are two classes among the Lewa Koonbees, and their Customs are as follows. According to the Custom, from highest to lowest, of the Wuttundar Pateedars, a person may, after marrying his first Wife, take two more, and notwithstanding any quarrels occurring between the elder and younger

younger ones, he can never consent to divorce any of them, but may give them a separate maintenance. Among the common labouring class of Koonbees, or cultivators of the Soil, a person of good family marries his daughter to one of equal rank, and if the Girl be very young, the husband may wed another Wife. The father can only prefer his suit for his daughter's divorce to the Sirkar, but has no right to insist on what her husband is alone capable of doing.

The Sudur Udalut after this fresh evidence, obtained by them, decreed that Respondent had no right, either by the Laws of the Shastr or Customs of his Cast, to demand a Divorce for his daughter, and a decree was passed accordingly, reversing that of the Provincial Court, and affirming that passed in the Zillah Court, which declared the marriage contract to be good and valid.

Decree, 20th May 1814.

No. 15.

DHOOLUBH BHAEE, NUTHOO BHAEE, and LALBHAEE, ... { *Sons of Bunmalee Chukka,* } *APPELLANTS,*

VERSUS

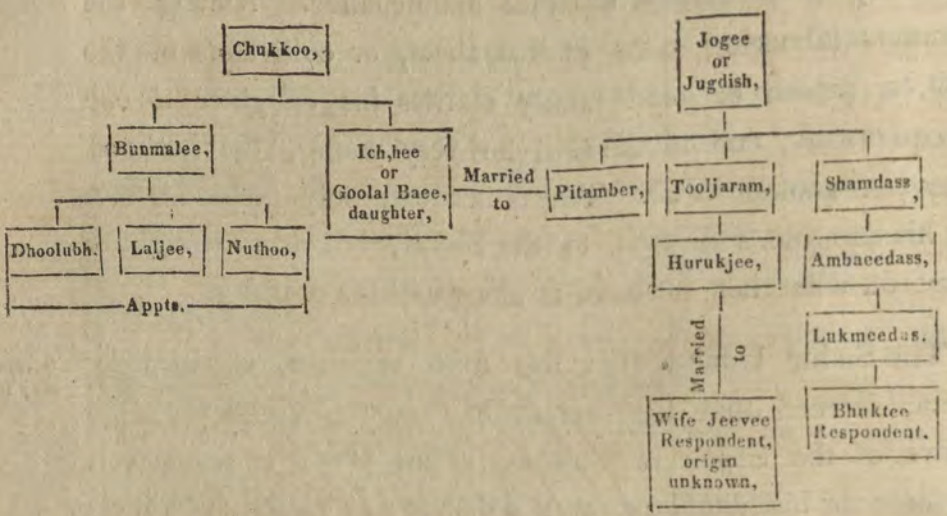
JEEVEE, alias WUJEE BAEE, WIDOW OF HURUKJEE, and BHUKTEE LUKMEEDAS, ... } *RESPONDENTS.*

THE parties were all of the Lewa Koonbee Cast, Respondents suing Appellants in the Surat Udalut on the 24th November 1809 for part of certain property consisting of houses, ornaments, cooking utensils, cloths, and Furniture left by the deceased Ichhee alias Goolal Bace, Widow of Pitambur, uncle of Respondent Jeevee's late husband, and unjustly detained by Appellants, own Nephews of the deceased Goolal.

Surat Udalut. S. Bourchier, *Assist. Judge.* Lewa Koonbee Cast.

The

The Judge drew up the following genealogical table.



Disputed Inheritance, Respondents claiming to succeed as Heirs of the Male Line, to the property of Pitambur, Paternal Uncle of the Respondents Jeevee Baee's late husband, and the own Brother of Respondent, Bhuktee's Great Grandfather.

Claim disputed by the Appellants on the strength of a will executed in their favor by their own Aunt, Widow of the deceased Pitamber.

The will by the Aunt declared by all the Shastrees to be illegal. Zilla Court decreed the property to Jeevee and after her death, but not before, to Bhuktee. Reservation by the Court of Appeal in favour of any Issue of Hurukjee.

This reservation not admitted by the Pundit of the Sudur Udalut; that Court affirmed the dis-

The Plaint stated that Bhuktee, as son of Lukmeedass, Hurukjee's Nephew, had a right to inherit the property of Pitamber, and to defray Goolal's funeral expences, which he was willing to do, but unable, until he obtained possession of this property.

Appellants denied the claim, stating that Pitambur, the husband of their aunt Goolal Baee, died without issue 26 years before, leaving the property in dispute which was not inherited from his Father, but gained and accumulated by himself, Pitambur. They said that their aunt was taken ill in A. H. 1,212 or A. D. 1797, and, through Mr. Seton the chief, induced the Nuwab to constitute Appellants the heirs to her property by a deed of inheritance duly signed and sealed by the Nuwab and the law officers, which they produced. From that time they had supported their aunt for 12 years, paid her debts, and provided her funeral expences, and Respondents had no claim to her estate, nor to contribute to the further funeral expences.

In the will, Goolal called herself daughter of Chukkoo and wife of Pitambur the son of Jugdish, and Appellants, her Nephews, Sons of Bunmallee, son of Chukkoo, constituting them her heirs on condition of their maintaining her during the rest of her life, and defraying her funeral expences, which they on their part engaged to do.

From

From the table and from the Pleadings the Court did not consider Appellants entitled to inherit the property of Ich,hee alias Goolal, which, in the event of her leaving no Son, must revert to the family of Pitambur, not descend to her own. The Will was rejected as an illegal document, being directly contrary to the Shastr. Possession of the Houses was therefore decided not to belong to Appellants, but to Respondent, Jeevee, who alone, by the Law of the Shastr, was entitled to hold the property in dispute during her natural life, and to whom possession was therefore decreed, Bhuktee being at the same time declared to have no claim or Title to participate, nor to touch the Estate, until her demise.

missal of Appellant's claim by the lower Courts.

Decree, 6th Dec. 1809.

The Appellants grounded their claim to reversal of the lower Court's Decree passed in Respondent's favor on the competency of the Nuwab's decision, which had been always upheld by the present Government, and their having performed their part of the Terms of the Will of Goolal.

Court of Appeal, Sitting at Surat.
N. Crow, *Chief Judge.*
Thos. Day, *3d do.*
Decree, 19th June 1811.

The Shastrees of the Court of Appeal verbally stated, that Jeevee was undoubtedly lawful Heiress to the estate in dispute, and that Bhuktee, the other Respondent, had no legal claim to it during her life, nor even in reversion after that, if Jeevee left Children by her husband Hurukjee Son of Tooljaram and that Ich,hee's Will in favor of Appellants was null and void, because directly contrary to the Law of the Shastr. (1) Concurring in this opinion, the Court affirmed the decision of the Assistant Judge in favor of Respondent.

The Sudur Udalut, after ascertaining that Hurukjee left a daughter by a first Wife, and another daughter by his second Wife, Respondent Jeevee, obtained the following answers to Questions propounded to their Hindoo Law Officer. " Goolal

Sudur Udalut.
Sir R. Nepean, *President.*
G. Brown, *2d Judge.*
J. Elphinston, *3d do.*

" Baee

(1) Mit. Book, Second Chap. on Reversal of Gifts, leaf 68th, page 2d, line 16th, " In " distress for the maintenance of the family (or the family not opposing the Gift, on account " of poverty) property may be given away, except a wife and son. But not the whole of " a man's Estate, if he have issue living, nor what he has promised to another." Cole. Dig. 2d 128, vide also note to Case No. 13.

" Baee was not authorized to assign, to the Children of her Bro-
" ther, the house of her husband Pitambur, which after his de-
" mise had descended to her, without the sanction of the Heirs.
" As the Sons of her Brother were not entitled to perform her
" funeral rites, she should have joined herself with the Res-
" pondents, who ought to have alone performed them." (2)
" Jeevee and Bhuktee alone were entitled to succeed to the
" property of Pitambur, whether moveable or immoveable, they
" being the Heirs of Pitambur." "Jeevee with the consent of
" Bhuktee (which must also be given) was to keep possession
" of the Houses during her life, after her death to belong to
" Bhuktee, in preference to daughters so long as he is alive.
" (3) The expense incurred by Appellants in maintaining
" Ghoolal

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(2) The Nirnuye Sindhoo in the third Book, declares the order of those enti tled to perform Shradhdh for a man as follows " A Lawful son, and his son, and Grandson; on failure " of these the adopted son, or on failure, the lawful wife of the deceased; next the Brother " or his son, and on default, the Father of the deceased his Mother, Sister, or her son. If " none of these exist, then the Supindas," among whom Repondents are included. The persons entitled to perform Shradhdh for any married or widow woman, are in order " her own " lawful son, or in default the son of her husband by another wife. If neither exist then her " own husband, and after him the Supindas," among whom Respon dents are included, because a woman on her marriage enters the Gotru of her husband, so Respondents, being Sugotrus of Pitambur, are Sugotrus of his wife also—and by the same Rule Appellants were not entitled to perform Ichhee's Shradhdh—because she had lost all tie of relationship with them by her marriage into another family.

(3) The Shastrees of the two Courts are directly at variance as to the succession after the Widow Jeevee—The point depends on the fact of Separation of the three Sons of Jugdish. If indeed it had not taken place, not only the daughters but the Widow Jeevee herself, must have yielded to the right of Bhuktee, which not being implied by the Sudur Udalut Shastree, strengthens the opinion given in the Provincial Court, which, as resting on separation, holds good under the following points of law. Munnoo 9, *v*, 187. " To " the nearest supinda, male or female, after him in the third degree, the inheritance next " belongs;—then on failure of Supindas and their issue, the Sumanoduku or distant kins-" man, shall be the Heir." It is clear that the son of one brother is *nearer* than the great grandson of another.

" The commentary on the same verse declares the Widow entitled to succeed her husband, " by this saying of Bruhuspute." " In scripture and in the codes of law, as well as in popu-" lar practise, a wife is declared by the wise to be half the body of her husband, equally " sharing the fruit of pure and impure acts; of him whose wife is not deceased, half the body " survives. How then should another take his property while half his person is alive? Let " the wife of a deceased man who left no male issue take his share, notwithstanding Kins-" men, a Father, a Mother, or uterine Brother be present." This saying of Bruhuspete is found in Cole. Inher. 138 and 325, *where* it is partially quoted in proof of the Widow's right of succession to a husband separated from his brethren and dying without male issue, declared

"Goolal Baee was to be defrayed from her moveable pro-
"perty, if existing. If not, Respondents were to pay it, as
"succeeding to the real property. Performance by Appellants of
"the funeral ceremonies when Respondents were present, gave
"them no claim to the property, but if not present Appellants
"were entitled to these expenses only, and to no more."

The Sudur Udalut thereupon affirmed the Decrees of the lower Courts, with Costs to be borne by Appellants in all.

Decree, 30th June 1813.

N°. 16

LAROO WIDOW of NANA SHAH.....APPELLANT,

VERSUS

SHEO WIDOW and her SONS FAKEERCHUND and JEEVUNRAM,..... { *Sister and Nephews of Hureewulubh Mukundas deceased,* } *RESPONDENTS.*

THE parties in this suit, filed on the 15th September 1809 were of the Cast of Dussa Shreemalee Goldsmiths, Appellant claiming Rupees 1,500 worth of Gold and Silver, as property left by Hureewulubh Mukundas, Nephew of Nana Shah, Appellant's late husband, but seized on by Respondents, the Sister and Nephews of the deceased Hureewulubh in defiance of Appellant's claim as Heir at Law.

Surat Adalut, S. Bourchier, *Assist. Judge.* Decree, 9th Feb. 1810.

Claim by a Widow to inherit the moveable property left by her late husband's Nephew, in preference to that Nephew's Sister and Sons.

Disputed on the plea, that the property

Respondents

declared in the famous verse of Yagnyuwulkyee, containing the principle universally acknowledged to govern all such inheritance. Vide Sudur Udalut Shastree's quotation of it in—Case 37 "The wife and the daughters &c." By this law, therefore, the widow Jeevee's daughters must succeed in preference to Bhuktee whom the Sudur Udalut Shastree favors. It may be said that strictly speaking the decision of the claims of the two Respondents had nothing to do with the point at issue between them and Appellant, the subject of the present Report. But there being a material difference between the opinions of the Law Officers of the two Courts, an explanation was required, more particularly since future decisions will be regulated by the opinion given in the Appeal Court, because its Shastrees were transferred to the Sudur Udalut at Surat, and one still holds the situation, the other having lately died.

sued for being the sale Proceeds of a House derived to the Nephew direct from his Maternal Grandfather, it must remain in the Female Line.

Claim admitted by the Zillah Court, which conceived the right of the Paternal Aunt stronger than that of the Sister.

Prov. Court reversed this decision, under the opinion of their Shastrees, and evidence of the Cast.

The Sudur Udalut Shastree agreeing that the Sister must succeed to the property if derived from the maternal Grandfater, the Court affirmed the Decree of the Provincial Court.

Respondents answered, that the property in dispute had not descended to Hureewulubh from his father Mukundas, but was the sale proceeds of a House, formerly belonging to Nagurdas, Respondent Sheo's maternal Grandfather, and must therefore continue in the female line, which was their's, instead of going into the hands of Appellant, who they said moreover had no Children of her own.

Appellant argued, that although Respondent was entitled to inherit such real property of which the Title Deeds were in the name of Nagurdas, or other member of her Mother's family, yet all Cash, and stock in trade as the property in dispute, Hureewullubh having carried on the trade of a Goldsmith, became the sole and exclusive property of Hureewulubh, to which her claim, as his Aunt, was stronger than that of his Sister, Respondent Sheo.

The Court was of this opinion also, that the claim of the Paternal Aunt was stronger than that of the Sister, and a decree was given in favor of Appellant accordingly.

Court of Appeal, Sitting at Surat. N. Crow, *Chief Judge*. Thos. Day, *Actg. 2d do*. Decree 18th July 1811.

The Court of Appeal referred the case for Report of their Shastrees, who found, from evidence of the members of the Cast, that Hureewullubh did inherit the property in dispute from Nagurdas, his maternal Grand-father; (1) according to the Shastr therefore, his Sister Sheo, Respondent became Heiress to Hureewullubh's property on his demise, and Appellant Laroo, being only related to Hureewullubh on the Father's side, could have no right to the property in dispute, which should descend in the maternal line. (2) They ascertained

(1) If the maternal Grandfather died without male issue, his Grandson succeeds under the law of Yagnyuwulkyu; quoted in Case No. 37, "The wife and the daughters and their Sons also."

(2 and 3) The right of the Sister is distinctly recognized in the Dayu Vibhagu of the Vyuvuharu Muyookhu where, speaking of the degrees of succession to the Estate of one dying without male issue (the Brother in this case) the Sister is declared next Heiress in failure of eight preceding, (the Widow &c.) on authority of Munnoo 9th, v. 187 (quoted in note 3) to Case No. 15.

tained that it was customary for a Sister (or *her* Son,) to inherit the Estate of her Brother (or *his* uncle) to the exclusion of the cousins of the deceased. From all which they pronounced Respondent Sheo proper Heiress to the Estate of her deceased Brother Hureewullubh.

Upon this exposition the Court of Appeal reversed the Decree of the Assistant Judge, giving one in favor of Respondent for retaining possession of her Brother's property.

Sudur Udalut
Sir E. Nepean, *President.*
G. Brown, *Judge.*
J. Elphinston,

Appellant, in her pleadings before the Sudur Udalut, clearly admitted that if the property in question came to Hureewullubh through Nagurdas, she, Appellant, could have no claim upon it, but contended, that it was made by Hureewullubh by his own exertions in trade, on which point she begged evidence might be taken.

The Judges were of opinion that sufficient proof was not had in the lower Courts, whether the property, of which Hureewullubh died possessed, did descend to him from his Maternal Grandfather, Nagurdas, or not; they remarked that it should have been clearly ascertained, from competent witnesses, either that the property in dispute *was* bonâ fide such inherited property, or the proceeds of the sale of it, or the profits acquired by trading with such Proceeds, before the point of Law arising out of it had been submitted for the opinion of the Law Officers and the Cast, and it was directed that further and more explicit evidence should be taken upon the subject by the Court of Appeal.

The Judges at the same time put a Question to the Pundit, desiring him to state to which of the Parties the Estate ought to be given, by the Laws of the Shastr, quoting the Book from which his Authority was taken. He answered that according to the Mitakshura, the Widow of Hureewullubh's uncle was entitled to Hureewullubh's Estate, to which neither his Sister Sheo, nor her Sons, had any claim whilst Laroo existed. The

Court

Court again demanded, since Laroo the Widow of the uncle, dying, had left an adopted Son, the child of her own Sister, whether the claim of this adopted Son to the Estate of Hureewullubh was preferable to that of the Sister? The Pundit answered again, if Laroo's Sister had two Sons, and the one adopted by Laroo be the youngest of the two, and if his adoption were performed according to Law, he is entitled to Hureewullubh's Estate, but not otherwise. But if the Estate descended to Hureewullubh from the maternal side, it must next descend to Sheo his Sister. (3)

The further evidence taken by the Court of Appeal, proved Hureewullubh to have been Heir to his maternal Grandfather, Nagurdas, but it was found impossible to ascertain whether the property left by him, was really the proceeds of what he had inherited from Nagurdas or not.

The Sudur Udalut then further obtained from their Pundit answers to the following Questions.

Question 1st. If Hureewullubh inherited property, both moveable and immoveable, from Nagurdas his maternal Grandfather, and none from any other person If he, during his life, converted the immoveable property into Cash, and vested the proceeds in trade, leaving only moveable? property at his death, whether should his own Sister, or the Widow of his Uncle, inherit such property?

Answer. This was answered in favor of the Sister on the former reference.

Question 2nd. Does the property left by Nagurdas belong both to Hureewullubh and to his Sister Sheo?

Answer 2nd. The property left by Nagurdas goes to both. (4)

Question 3rd. Do the particular Customs of Cast in any case supersede the Law of the Shastr?

Among

(4). Only in perference to the Paternal Relation; it dose not go both to the Brother and Sister at once, but to the Sister in succession to her Brother.

Among Casts there are some Customs not to be found in the Shastr. Answer 3rd.

The Sudur Udalut having ascertained, that property descending in the Female line must, by the law of the Shastr, continue to descend in that Line, and that accordingly Respondent Sheo was next legal Heiress in the Female line to such property coming through her Brother Hureewullubh deceased, decreed that the decision of the Court of Appeal, awarding to Sheo the property in dispute of her said Brother, should be affirmed. Decree 6th Oct. 1813.

N°. 17.

DAEE WIFE OF NURSING LULLOO.....APPELLANT,

VERSUS

MOTEE NUTHOO or NURSOO; TRIBHOWAN NAGUR, and the Cast of DESHAWUL BUNYUNS,..... } *RESPONDENTS.*

Appellant laid her claim in the Zilla Court on the 19th September 1809; to recover from the whole Cast, a maintenance for herself, rendered necessary from their having forcibly married her to a spendthrift. She said that A. S. 1848 or A. D. 1792, her father contracted her in marriage with her present husband, Nursing, who turned out so badly, associating with thieves and gamesters, that her Father wished to break the contract, when Goolal Keshow, Nagur Lalchund, Ich,haram Girdhurlal, and the whole of the Jumaut, carried him before the Nuwab, to get him to enforce the contract, of which the Nuwab however disapproved as binding Appellant down to a very disreputable and improper alliance. Mr. Griffiths, the Chief, before whom the matter was then brought, was of the same opinion, and told Appellant's father to marry her to whomsoever he chose. Her Father set out for Oolpar, with a view to get her married there, when

Surat Udalut S. Bouchier *Assist. Judge.* Decree 10th Jan. 1810.

Des awul Bunyuns.

Claim laid by Appellant against the Cast, to obtain from them a maintenance for herself and children, on the grounds that the Cast had entailed poverty on her by enforcing, contrary to her wishes, a contract of Marriage with her husband, a Spendthrift, and Gamester.

Claim against the Cast as a Body,

disallowed in all the Courts under similar expositions of the Shastr by their respective Law Officers.

Incidental claim of Appellant against the first named Respondent, as Heir of the former Head of the Cast said by Appellant to have regularly adopted Appellant's husband, found to have been already decided against the husband, and again thrown out.

when Goolal Keshow and Ichharam Girdhurlal bribed an Officer in the Gaeckowar's service, and procuring some horsemen from Kamraj, seized and carried Appellant and her Father there. After using them very harshly, Goolal Keshow declared that he adopted her betrothed husband Nursing as his own son, and would satisfy her Father in every way before the Cast at Surat, and then, before all the members present, seated the Appellant Daee by his side. By this open declaration her father was induced to consent to the marriage, and Goolal brought her in as his daughter-in-law to Surat, where he gave a dinner to the Cast, as Appellant alleged, on Account of the adoption of Nursing. The latter, in consequence of his irregularities, fled from Surat, where Appellant was thenceforth maintained by Goolal Keshow. She admitted, however, that Goolal adopted Respondent Motee Nuthoo as his Heir, and dying in A. S. 1865 or A. D. 1809, the said Motee had taken possession of the property, turning Appellant and her two Sons out of doors. Being in great distress, and unable to celebrate their marriages, she now called upon Motee Nuthoo, and the rest of the Cast, to provide for them and her. Motee Nursoo for himself answered, that Appellant's claim against him was false, and had been decided so by a Decree passed in his favor in the suit No. 1,318 of 1809, filed in this matter in the Udalut by Appellant against him, and to which he referred the Court. He said that she was induced by the Jumaut to file this suit, because he, Respondent, had not spent as much money among them as they in their greediness wished to get, and declared it proceeded entirely from sheer malice.

The rest of the Jumaut in answer said, that Goolal Shah had taken on himself the charge of Appellant's Marriage, and had also adopted Respondent as his Heir. They, the Cast, had enquired into the Case, and were of opinion that Respondent Motee ought to satisfy Appellant.

The Court, taking a view of the suit as only filed against the Jumaut, thought it, the Jumaut, could not be bound to provide

for

for Appellant, and the Shastrees of the Court, gave their opinion that the claim against it was not good in Law. (1) As the Appellant was so destitute, and had been forced by the Respondents in a very cruel manner into the marriage, the Court awarded all the Costs to be borne by them alone.

Court of Appeal, Sitting at Surat.
N. Crow, *Chief Judge*,
T. Day, *3d do.*
Decree 15th July 1811.

The claim was the same as in the Court below, for a maintenance from the whole Cast, and the Provincial Court in like manner referred it to it's Pundits, who answered, that Appellant's claim was improper, and she had by the Shastr, no claim whatever either against Respondent Motee, or against the Cast.

The Court accordingly dismissed the appeal, giving Appellant all her costs from Respondents, for the same reasons assigned in the Decree of the Zilla Court.

Sudur Udalut.
Sir E. Nepean, *President.*
G. Brown,
J. Elphinston.

The Sudur Udalut conceiving it necessary to the further elucidation, and correct decision, of this Cause, to call for the Zilla Judge's Preceedings in the suit No, 1,318 of 1809, and for more direct proof whether Goolal did adopt Nursing, Appellant's husband, or not. A Precept was issued for that purpose to the Provincial Court, directing them at the same time to ascertain, whether a Paper of adoption, by Goolal, of Appellant's husband Nursioon, regularly drawn out by Goolal with his own hand, did, or did not, ever exist, as Appellant before the Sudur Udalut had asserted that such a Paper was taken from her forcibly by Motee Nuthoo.

The Sudur Udalut at the same time put a supposed case to their Law officer.

If a man, having regularly adopted a son, marry that adopted son to a Woman, and children are born of the marriage, can the adopting Father disinherit, for bad behaviour, the son so adopted, and adopt two other sons, to the prejudice of the Wife and children of the first adoption?

To

(1) Because nowhere implied or declared by law.

To which he answered "an adopting Father cannot disin- "herit a son properly adopted agreeably to the Laws of the "Dhurm Shastr, not even for bad behaviour, neither can he "adopt another son." (2)

The return to the Precept issued to the Provincial Court contained the following Papers.

"Proceedings of the Zilla, Court in the suit called for, viz.

(Enclosure No. 1.)

NURSING, adopted Son of GOOLAL SHAH, and Wife DAEE, ... } *PLAINTIFFS,*

VERSUS

KHOOSHAL and MOTEE, Sons of NUTHOO, ... } *DEFENDANTS.*

Surat Udalut. S. Bouchier, *Assist. Judge.*

"Respondent claiming the Estate of the deceased Goolal "Shah, Plaintiff's father by adoption, worth Rupees 1,000, "usurped by Defendants, they in answer denied Plaintiff's "Plea, of being an adopted son, and exhibited a Will of "Goolal Shah, which proved to have been duly registered in "the Registry Office of Surat, constituting Defendants Heirs "to the whole of his property.

"On an examination of Plaintiff by the Shastrees, as to the "circumstances and ceremonies of his adoption, he stated that "he was only 13 years of age at the time, and an only Son. "The Shastrees allowed that the Law of exclusion of only "Sons from the privilege of adoption, related to Brahmuns "alone, and Plaintiff being a Shoodru, was not bound by it. "(3)

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(2) Mit:. Book Second, leaf 60th, page 2nd, line 1st, "Narud also declares, an enemy to "his father, an outcast, an impotent person, and one who is addicted to vice, take no "shares of the inheritance, even though they be legitimate, much less if they be sons of "the wife by an appointed kinsman." Cole. Mit. 361. Still less therefore a son only by adoption. Munoo also ch. 9th v. 20th, "Eunuchs and outcasts; persons born blind or "deaf, madmen; idiots, the dumb, and such as have lost the use of a limb, are excluded "from a share of the heritage." One free from these defects of course cannot be deprived of his inheritance, and an adopted son is in that case entitled to the same privilege.

" (3) But he was unable to give a satisfactory account of the " ceremonies which were performed at his adoption, though " old enough to have understood them (as his previous habits " of life proved) and he moreover admitted that the Funeral " Ceremonies of Goolal Shah, and particularly the Sûpinda " Kurun, were performed by Defendants.

" The Court remarked that the Cast never would have al- " lowed this, when Plaintiff was in Surat, if his adoption had " been regular, and called upon him to produce evidence of " his adoption, overruling his prayer for entrusting the case " to a Cast decision, on cause being shewn by Defendants that " it should not be referred, because the Cast were movers of the " claim, being dissatisfied with the measure of Defendants libe- " rality in squandering Goolal Shah's money in feasts &c.

" Four Witnesses called by Plaintiff could none of them speak " positively to his adoption, and he having no other evidence to " adduce, the Court, reconsidering the proceedings, observed " that proof of adoption had not been adduced by Plaintiff, and " Defendant's Title was to be presumed preferable, otherwise " the Cast would neither have allowed them, Defendants, to per- " form Goolal Shah's Funeral Ceremonies, nor have partaken of " their Feasts. The only irregularity observable in their title was " in the will constituting both of them Heirs by adoption, the " Law only permitting the adoption of one child, but the Court " considered this, they being of an undivided Family, not to af- " fect the Plaintiff's claim, which was dismissed with costs."

To a Question put by the Provincial Court to their Law Officer " whether a person having adopted one man for his " Heir could annul the first adoption, and make another adoption," it was answered a " Person, the ceremonies of whose adop- " tion are preformed according to the Rules of the Dhurm " Shastr, is called Dat Pootr; the adoption so performed is dura- " ble, (Enclosures No. 2 and 3.

(3) Not to be found, either in the Mitakshura, Munoo, or Mayookh.

" ble, cannot be dissolved, and the person adopted becomes there-
" by equal to a legitimately born Son. But if one man take another
" for the purpose of adopting him, and if he change his mind
" before full performance of the ceremony for adoption, as laid
" down in the Shastr, he is at liberty to put aside the first person,
" and to adopt any other whom he chooses."

The Court of Appeal cross examining Appellant, found from her that her Wakeel in Bombay had taken upon himself to say Respondent violently deprived her of the Paper, which she then, before the Court, said she certainly did once possess, but had since lost it, she could not tell how.

Decree 6th October 1813.

Upon receipt of the above Papers, the Sudur Udalut after reconsidering the Proceedings resolved to affirm the decrees of the lower Courts against Appellant, as well as the stipulation in her favor respecting the Costs of suit, which were decreed to her again.

No. 18.

BHOOLLA RUNCH, HOR; NIHALCHUND KUSSULCHUND; NEMCHUND NANA BHAEE; KHEMCHUND KESHOOR; and the other 250 Members of the Cast of DUSSA SHREEMALEE BUNYUNS.. ..... } APPELLANTS.

VERSUS

RULYAT, WIDOW of KASHEERAM..... RESPONDENT.

Surat Udalut. No. 1740 of 1810. S. Bourchier, *Assist. Judge.*

Dussa Shreemalee Bunyuns. Suit laid by Appellants, certain Members of the

THIS suit was brought by Appellants on the 17th July 1810, to prove their right to change the Nyat Gour of the Cast, and to turn out Respondent, who then held the office. They stated, that she obstructed them by a claim to the Nyat Gowree, and the right to collect certain dues from each House, or Family, in the Jumaut, as derived to her by right of inheritance from a woman

woman named Ub,hee, but to which office the Appellants declared neither of these Women had any right, and prayed that a reference might be made to the Hindoo Law Officers, whether the majority of the Jumaut had not the power of transferring the right of making these collections to another.

Cast, under the name of the whole, to prove their right and title to remove Respondent from the Office of Nyat Gour, or Cast Priest, and to choose another in her room.

Respondent declared that this claim was made out of enmity to her by a party adhering to one Adeetram Muheshwur, and referred to two Suits in the Udalut Nos. 3490 of 1807, and 6787 of 1808, the first filed by Adeetram Muheshwur against Ub,hee, and the other by Ub,hee against him and a second person named Goolabchund, both formerly decided in the Register's Court in Ub,hee's favor, as containing the most complete answer to the present suit.

Defence rested on a right established by former decisi- to belong to the last holder of the Office, from whom it came direct to Respondent in descent from the family of the original Nyat Gour.

Former decisions adduced in evidence, from which the last holder's Title was clearly proved, as well as that nothing short of unanimity could eject the Nyat Gowr. Unanimity not existing on the point, the Zilla Court rejected Appellant's claim, and the Decree was affirmed in Appeal by the Courts of Appeal and Sudur Udalut.

On a reference to the first of these, it appeared that Adeetram Muheshwur filed his suit on the 12th May 1807, to decide the right, of himself, or of Ub,hee, to Rupees 300, Proceeds, in deposit, of marriage Fees levied on the marriage of the daughters of Yujmans, as belonging to the Nyat Gour, the right to whose office was claimed by each of the parties.

No. 3490 of 1807. Capt. Shuldham, *Act. Register*

Ubhee said that the dispute had been settled sixty years previous, by the parties, that is to say by Adeetram's father Muheshwur and her (Ubhee's) Father-in-law Mooljee, who agreed to take each a certain share of the Fees from the Yujmans, and passed Releases to that effect, which Releases had never been broken to that time. The Release exhibited by Ubhee in defence, was passed by Muheshwur, son of Someshwur,

wur, son of Ishwur, Brahmun inhabitant of Surat, to Mooljee, son of Dyaram, son of Runch,hor, native of Ahmudabad, then inhabitant of Surat, on the 22d Ruzzan A. H. 1155, or A. D. 1740, and stated the Proceedings held at the time as follows, " Mooljee made a complaint to Moohummud Mus-
" saood Khan, Thanedar of the Chowraisee Purgunna, against
" him, Muheshwur, for having levied for the last 22 years from
" Moteechund Mecta and other persons, since their residence
" at Surat, certain contributions, and presents upon occasion
" of Deaths and Marriages, to which contributions and pre-
" sents he, Mooljee, had a preferable right because those per-
" sons were natives of Ahmudabad and had always, up to
" the time of their arrival at Surat 22 years before, paid the
" dues to himself, Mooljee, and he prayed that Muheshwur
" might be prohibited from levying them in future from any
" but natives of Surat. Muheshwur contended that these
" were Gifts under no control, and voluntarily paid to him
" by Moteechund and others. It was decided that Motee-
" chund and all other natives of Ahmudabad, who had come
" within the last 22 years to reside at Surat, should pay their
" Fees to Mooljee, but all natives of Surat, and those who
" had come to reside there more than 22 years before from
" Ahmudabad, should pay their Fees to Muheshwur. This
" Farighkhut, or Release, was thereupon passed by Muhesh-
" wur, to Mooljee, giving up to the latter all claim to Fees or
" contributions from persons who had not resided at Surat for
" 22 years before the passing of it."

The Court on perusing this Deed thought it only necessary to discover whether the Fees in dispute had been paid by the old or the new sect, by the descendants of Runch,hor, or by those of Moteechund. Of all the Witnesses called in this suit, only one said that he was of Adeetram's Yujmans, all the rest declaring themselves of Ubhee's sect, and one of them explained that Ubhee's ancestors were formerly Nyat Gours, but on failure of a Representative, the Cast had elected Adeetram

tram until the arrival of Mooljee, when the latter got the office again. Adeetram's claim was therefore dismissed by the Acting Register. Decree 5th October 1807.

The other suit was brought, on the 17th February following, by Ublee against Adeetram and Goolabchund, the former for receiving, the latter for paying to him, certain dues on the death of Goolabchund's Brother, such dues, and performance of the funeral ceremonies, or Matum Poorsee, belonging to her, Ublee, only. No. 6737 of 1807, Captain Shuldam, Act. Register

Both the Defendants said that Goolabchund was no descendant of Motee, therefore no Yujman of Ublee, and wished to call in question the Deed of Release exhibited in the former suit.

The Court, keeping in view the decision shewn in the Deed, tried with the assistance of the Shastree, to trace the descent of Goolabchund, but found it quite impossible, and the parties allowing that they had for mutual convenience, changed several families, the Court called in four old people of the Cast, to decide the nature of Ublee's right as Gour, the Shastree observing that these rights were generally of two kinds, one which could, the other which could not, be done away by the individual Yujmans concerned. (1)

These four old men defined Ublee's rights to be those of a Nyat Gour, or general Gour of the whole Cast, and therefore only to be removed by an unanimous vote of the whole.

The Court after minute enquiry also found that Goolabchund's family had been Yujmans of Ublee, whom it therefore decreed entitled to all Fres from them, and decided that Goolabchund Second Decree 24th March 1808.

(1) The Shastrees mean, that the Kool Gour or family Priest, may be changed by the Will of the master of the family. The Shastru does not distinguish the two. Munoo 8th, *v.* 388. "The sacrificer who forsakes the officiating Priest," (Ritvijee, a family priest, also used generally) "and the officiating priest who abandons the sacrificer, each being "able to do his work, and guilty of no grievous offence, must each be fined an hundred "punas."

chund had no right to give them to Adreetam, nor Adeetram to receive them from him.

After perusal of these former decisions, the Zillah Judge found that the ancestors of Respondent had been, time out of mind, the hereditary Gours of the Cast, whilst Muheshwur, the Father of Adeetram, whom it appeared to be Appellant's wish to substitute for Respondent, only acted originally in that capacity during the temporary absence of Mooljee, Respondent's Ancestor. The Shastr was found to contain nothing on the subject, and the Court referred to the Raij ool moolk, or custom of the country; according to that custom, the office was hereditary, and the holder of it could not be changed but by unanimous consent of the whole Cast; and the wish for a change in this instance was not unanimous, because there was a party in favor of Respondent. The Court therefore refused to admit Appellant's right to change their Nyat Gour, and dismissed their suit with Costs.

Court of Appeal, sitting at Surat.
N. Crow, *Chief Judge.*
J. Romer, *Acting 2d do.*
Decree 25th Sept. 1811.
Sudr Udalut
Sir E. Nepean, *President.*
G. Brown,
J. Elpinston,
Decree 26th July 1813.

The Court of Appeal agreed with the lower Court in opinion, and affirmed the Decree. The case going before the Sudur Udalut, that Court also fully concurred in the propriety of the above decisions, and dismissed the Appeal with Costs.

N^o's. 19 and 20.

NHANEE WIDOW of ATMARAM NANA..APPELLANT,

VERSUS

HUREERAM DHOOLUBH and The Cast of Sreemalee Brahmins..... } *RESPONDENTS.*

Surat Udalut
S. Bourchier, *Assist. Judge.*

THIS Suit was filed on the 13th of June 1809, to recover damages for loss of Cast. Appellant said that since the death of her husband, Atmaram Nana, 5 years before, she had been in

in the habit of attending all Cast dinners very regularly, and the Cast had likewise attended her feasts; but that Respondent, Hureeram, caused her to lose Cast by omitting to invite her to one which he gave to the whole of the Cast, three days before filing the suit, for which she could not account, unless it were that her sister's husband had filed a suit against Respondents for a similar Act. She prayed the Court to call up Respondents, and enquire into her case.

Claim by a Sreemalee Brahmun's Widow to compel the Cast, who had expelled, to readmit, her.

Appellant's expulsion justified by the Cast, on the ground that they had lately discovered her not to be a Sreemalee Brahmunee, and that the Cast had been imposed on in originally admitting her and her Sister, by marriage among them.

Suit laid over until decision of the Sister's Appeal in the Provincial Court, (which rested on the fact of the other Sister, Appellant, having been a Member of the Cast for five years), and afterwards decided in Appellant's favor agreeably to Provincial Court's Decree awarding restoration of the Sister to Cast.

Sudur Udalut reversed the decision of the Provincial Court, which thereupon also reversed the Zilla Decree, in Appellant's favor, founded upon their own Decree.

Sudur Udalut dismissed the claim for restoration to Cast, but granted the damages, under the peculiar hardships of the case.

From the answer it turned out, that a member of the Cast, named Jaee Bhace Myashunkur, went away from Surat with Atmaram Nana, and on their return with Appellant, she was introduced by them to the Cast as a Sreemalee Brahmunee, and Atmaram's Wife, which rank she held among them until one Gungaram Narayan came to Surat to negotiate the marriage of his daughter, and on being questioned about his Cast and extraction, called himself a Sreemalee Brahmun coming from Ruttunpoor, and said Appellant Nhance was his daughter—But the Cast suspected his account of himself, and sent a deputation of five of their Members to Ruttunpoor, where it was ascertained that Gungaram and his Wife were not Sreemalee Brahmuns, and that none of that Cast would touch his victuals.—When this was found out, Appellant was of course expelled the Cast, not they declared out of enmity for the prosecution of them by her brother-in-law Gungaram Wiswunath, because his Wife (Appellant's Sister) was turned out of the Cast also on this discovery, but for having concealed that her Father was of an inferior Cast to the Sreemalees, and eating with them notwithstanding during five years, though of a lower Cast, by doing which she had polluted the whole Cast.—They said it would be contrary to their religion and the Shastr, for them to allow her again to eat with them after the proofs they had of her inferiority in point of Cast, but were willing to send five Members again to Ruttunpoor with Appellant, and on her proving herself and family to be of the Sreemalee Cast, they would re-admit her.

The

The suit above alluded to, of Appellant's Sister's husband against the Cast, being under revision before the Court of Appeal, a decision on the present one was postponed till receipt of the Provincial Court's Precept with their decree, which being in favor of restoring Appellant's Sister and her husband to their rights in the Cast, the Zillah Court, in conformity to this precedent, decreed that Appellant should be also admitted to her former privileges in the Cast.

Zilla Decree, 19th September 1810.

The Cast, however, preferred an Appeal to the Sudur Udalut against the decision of the Court of Appeal in favor of Gungaram Wiswunath, and it becomes necessary to notice the proceedings in that suit here, because the Court of Appeal, in consequence of the Sudur Udalut having reversed the decision given by them in favor of Gungaram Wiswunath, also reversed by precedent, the Zilla Court's decision in the present suit of Nhanee versus the Cast, when subsequently appealed to them.

No. 769 of 1809.

Gungaram Wiswunath, in his original Suit, laid claim to have his Wife Deokoonwur acknowledged a Member of the Cast, and himself restored to it, because her own Sister Nhanee, born of the same Parents, had for five years been admitted to all privileges in it.

The Cast was divided in opinion whether they should be acknowledged or not, as appeared by a Muhuzer which Gungaram exhibited from the minority of twenty seven in favor of his, and his Wife's, admission.

The Majority of fifty six defended the act of expulsion, and declared him, Gungaram, bound to prove his Wife and her Father to be pure Sreemalees, before they were in turn bound to readmit him. They at the same time declared their resolution, in the event of his failing to prove it, not only to expel Nhanee also, but to call Jaee Bhaee to account for the imposition he had practised, and the defilement he had brought upon them. The manner of the Sister's (Nhanee's) admis-

sion

sion and continuance in the Cast, and indeed all the facts above stated, were admitted by both parties.

The Judge examined the Cast, on their reasons for not admitting Deokoonwur among them, when her Sister Nhanee had been, and still was, a member, and not conceiving their plea of ignorance of Nhanee's real Cast till the arrival of her Father, and their consequent investigation, to be well founded, declared their conduct unjustifiable and oppressive, and decreed the readmission of Gungaram Wiswunath, and of his Wife Deokoonwur, to all Cast privileges.

The Cast, upon this decision again sent some of their members to Ruttunpoor to ascertain the Cast of the two Women, and their former doubts being fully confirmed, they first ejected Nhanee, and then filed a petition of appeal against the Zilla decision in Gungaram's favor, exhibiting in support of their claim to reversal of it, the certificate they had obtained from fifty seven Sreemalee Brahmuns of Shookhteeruth, only 7 Koss from Ruttunpoor, stating that Gungaram Narayun, the Father of these women, lived at Ruttunpoor, but they had never drank water with him.

Gungaram and his Wife exhibited a certificate signed by the only Sreemalee Brahmun at Ruttunpoor, six Oodeech Brahmuns, one Kharawul Brahmun, and one Chowveesa Brahmun, in the name of all the Brahmun tribes of Ruttunpoor, and by three Sreemalee, three Khundaita, and two Lar Bunyuns, writing that Gungaram Narayun had resided there for twenty five years, and was a Sreemallee Brahmun, correct in his faith and free from vice. The Deponents however did not eat with him, because he was a foreigner, and no one coming from a foreign country is allowed to eat with the Cast, but he was nevertheless in every point a perfect Sreemalee. They mentioned that three offers of Marriage had been made for one of his daughters. One of the Bridegrooms, a Sreemalee of Shookulteeruth died 10 days after the contract or Mungnee; the other, of Buroda,

went

went away because they could not agree about terms; and the third was not accepted, because a foreigner, of Khumbait, or Cambay.

Gungaram further pleaded, that by a Custom of the Cast, a member who married out of the city is obliged to give two Feasts to the Cast, which Nhanee's husband deferred from poverty until his death, when Nhanee finding the neglect prevented her admission into the Cast, disposed of her very ornaments to give the dinners, and was accordingly admitted into the Cast.

Of the two sitting Judges, the Junior, Thos. Day Esq. was of opinion that in consequence of Nhanee having fed the Cast, and remained a member of it during five years, and of 21 Families being in favor of Gungaram's re-admission, and from the certificate produced by them, to prove Gungaram Narayun, the Father, a pure Sreemalee, they, his daughter and Son-in-law, were fully entitled to claim admission, and that it should be awarded accordingly.

The Chief Judge observed that they had not attempted to assert malice or ill will of the Cast towards them, the only grounds on which the Court could interpose in their favor. It was incumbent on them to prove, to the satisfaction of the Heads of the Cast, Gungaram Narayun to be bonâ fide a Sreemalee Brahmun, which the Cast had strong grounds to suspect. The Majority of the Cast was for supporting the expulsion, and the certificate produced, of itself proved that Gungaram Narayun could not be a Sreemalee Brahmun, because the certifiers themselves refused to eat with him. The chief Judge, after quoting in favor of the Cast the sentiments of Mr. Threipland, approved by the Sudur Udalut, (as shewn in case No. 9) called upon the Register of the Court to give his casting voice, in conformity with the Government's instructions of the 17th August 1808.

Mr.

Mr. Strachan, the Register, considered the future happiness of Gungaram and his wife to be involved in this question, and thought the Cast had not shewn sufficient proof of their being actuated by conscientious motives, and anxiety for the welfare of the Cast, to warrant a verdict in their favor, after Nhanee had been admitted to full privileges and remained among them for five years. Her subsequent expulsion appeared made with a view to cover this inconsistency of their conduct, and the Register thinking that personal opposition to Gungaram alone influenced the Cast, gave his opinion for affirming the Decree for Gungaram's admission, which was decreed accordingly.

Sudur Udalut. Jon. Duncan, *President.*

The case coming before the Sudur Udalut, the Court on the first hearing ordered the Suit to be laid before a Punchayut composed of the most respectable members of several Casts of Brahmuns at Surat, leaving it to them to say, whether it should not be left to the Majority of the Cast of Sreemalee Brahmuns to exclude Gungaram Wiswunath, his wife and her Sister, from the Cast, until Gungaram Narayun, the father, should unequivocally prove to their satisfaction that he was a pure Sreemalee.

The Provincial Court convened a Punchayut, composed of its own two Hindoo Law Officers, and three other persons, who gave it as their opinion, that the Majority were not at liberty to put any one of these persons out of the Cast, because Nhanee was admitted after a dinner, and deliberation had upon her case.

Decree.

The Sudur Udalut held nevertheless, that the act of exclusion was valid, until Gungaram Narayun should shew proof of his identity of Cast with the Sreemalees, and reversed the decisions of the lower Courts, confirming to the Cast their right to maintain their purity by refusing communion with a suspected person.

Provincial Court's Decree, 3d October 1811.

It was upon receipt of the precept certifying this decree of the Sudur Udalut, that the Court of Appeal reversed the Zilla decree given in favor of Appellant Nhanee against the Cast.

Nhanee

Sudur Udalut, Sir E. Nepean, *President.* G. Brown, J. Elphinston, A. Bell.

Nhanee appealed further to the Sudur Udalut, and that Court was induced, from so many suits and appeals having been preferred lately respecting the right of Casts to eject individuals from among them, to refer to the Sudur Deewanee Udalut in Bengal for information, whether such Suits were there entertained, and if so, whether the damages only were awarded, or a Decree for restoration to Privileges was passed, and how such a Decree was carried into execution.

The answer to this communication, forwarded through the Supreme Government as the regular Channel, contained

" A Report of the only cause ever heard and determined in " the Sudur Deewanee Udalut respecting Damages for loss of " Cast.

" A Brahmun Widow was accused of having procured " abortion, and was imprisoned by the Zumeendar of the district " for four months on the charge, and fined Rupess 70.

" The Cast expelled her on the common belief of her Guilt " from the strong measures pursued, but the Magistrate punish- " ed Lal Soondur, the Zumeendar, very severely for this act, " and a Decree was given against him in the Civil Court for " restoration of the fine, and an injunction to him to cause " Plaintiff's restoration to her Cast, which he engaged to do.

" Lal Soondur died without doing it, and the Widow sued " his Heirs in Rupees 10,000, the amount which she proved " would be necessary to induce the Cast to receive her again. " But the Hindoo Law Officer gave a Vyuvustha, stating that " a son is not liable for a penalty incurred by his Father in " expiation of an offence; for neither sins, nor the expiation of " them, are hereditary. (1) The claim was therefore dismissed " and

(1) Vide Sudur Udalut Shastree's fourth answer in No. 36 of Surat Cases, commencing. " The Balance of a debt &c." Also Bhagvutu Pooranu " In this Yoog the Doer " alone is tainted; sin affects only the perpetrator of it."

" and the decree affirmed on appeal both in the Provincial " Court and Sudur Deewanee Udalut, each party paying their " own Costs, because Plaintiff sued in formâ pauperis."

The Sudur Udalut on reconsidering the whole of the proceedings in these Cases, determined to uphold the power of the Cast to reject Nhanee as a member, but decided that the amount sued for the Cast was bound to pay, viz. Rupees 1,183, in consideration of the fruitless expense she had been put to in giving two dinners to them for admission, because the advantage she was to derive from it was done away by her subsequent expulsion.—The amount of damages sued for was accordingly decreed to Nhanee, but her right to claim re-admission disallowed.

Decree 20th May 1814.

No. 21.

JUGGUNATH RUGHOONATHDAS,.....Appellant,

VERSUS

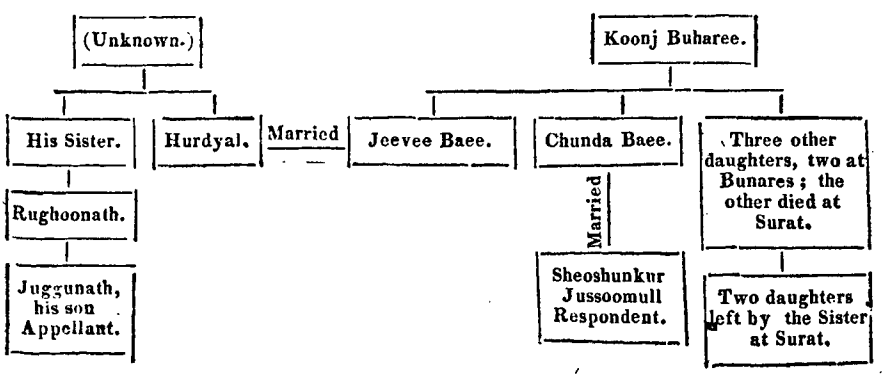
SHEO SHUNKUR JUSSOOMUL,.....Respondent.

THIS claim was filed on the 1st November 1808 by Appellant for Rupees 2,496-2-00 value of certain property descending to him by right of inheritance from one Jeevee Baee, from whom he traced his descent as follows.

Surat Udalut, S. Bourchier, *Assist. Judge.*

Disputed inheritance, Appellant suing to recover property of his Paternal Grandmother's late Brother, who died Childless, in preferencc to Respondent, Brother in law of the Widow of the deceased.

Zilla Court found that the property in dispute descended to the Widow of the deceased from



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her own Father, and that Issue of her Sister's was existing and the claim was dismissed.
Affirmed by the Provincial Court, and also by the Sudur Udalut, under an opinion of the Hindoo Law officer.

The Appellant wished in the first instance to prove the existence of the property sued for, which by a Schedule annexed to the Petition was, "Balance of Jeevee's Jewels seized by Res- "pondent's Father; a Fifth share of Jeevee's Father's Estate, "also seized by Respondent's Father; a House belonging to "the same estate; and Cash received by Jeevee from Appel- "lant's Father." But Appellant could only shew, from a deed executed by Hurdyal, that the latter left to his Widow Jeevee, for her sole use, all her Jewels, valued at Rupees 1,450, after making over a House to Appellant in payment of an old debt. The Court considered his Title to the property the first point requisite to be disposed of. Appellant traced his own descent in the direct line, claiming it through his Paternal Grandmother's Brother, the husband of Jeevee. But the property of which Jeevee died possessed, was, by Appellant's admission, inherited from her own Father, and must descend in the direct Female line by the law of inheritance, in preference to a Family connected only by marriage; and two nieces of Jeevee, named Tejkoonwur and Goolab Baee, were then alive and in Surat. They were her nearest Relations and legal heirs, being descended in a direct Line from Koonj Buharee, Jeevee's Father. Appellant's claim to her property was therefore dismissed, as utterly without Foundation.

Decree 1st August 1810.

Court of Appeal.
N. Crow, *Chief Judge*,
J. Romer, *Actg.* 3d *do.*
Decree 24th Sept. 1811.

This decision was affirmed by the Court of Appeal.

Sudur Udalut.
Sir E. Nepean, *Pres.*
G. Brown,
J. Elphinston.

When the cause came before the Sudur Udalut, that Court made further enquiry respecting the Relationship of the parties, and put the following Question to its Law officer.

Is the Sister of Hurdyal, or is the Sister of Jeevee Baee, the Wife of Hurdyal, entitled to inherit property derived from Jeevee Baee's Father? He said, "according to the Dhurm Shastr, "the property derived by Jeevee from her own Father goes, "after

" after her demise, to her own Sister, (1) not to the Sister of her " (Jeevee's) husband." The appeal was therefore dismissed by the Sudur Udalut, after ascertaining that the Relationship of the parties respectively to Jeevee stood as exhibited in the Table, and that Appellant, by the above Vyuvustha, was incapacitated from succeeding to the property in dispute.

Decree 14th Feb. 1814.

N°. 22.

BHAEE SHAH KESHOOR, Representative of the Firm of KESHOOR KULYAN.... } *APPELLANT,*

VERSUS

RAJKOONWUR, Widow of GUNGADASS HUREE BHAEE..... } *RESPONDENT.*

THIS suit was filed on the 3d January 1810 to recover from Respondent, Executrix to the Estate of Gungadass, Rupees 3,460-2-60 Balance of the principal, and Rupees 4,308, the Interest, of a Bond for Rupees 8,085,-2-00 passed to Appellant by one Ubdool Luteef, amount balance of an account due by him to Appellant, in security for payment of which he had deposited a Bulse of valuable Pearls, and got Respondent's late husband to countersign the Bond. Appellant in filing this suit, allowed Ubdool Luteef credit for Rupees 785-2-00 intending to sue him hereafter, and for Rupees 3,839-1-93, that part of the balance of Rupees 7,300 realized by himself on sale of the Pearls. But Ubdool Luteef being poor, Appellant said he filed his suit against the Widow of the Security, to recover the balance still remaining due to him on the Bond, as above stated.

Surat Udalut, S. Bourchier, *Assist. Judge.*

Claim against a Widow, to enforce payment of a Security entered into by her late husband for a third person to Appellant.

Decided in all the Courts that a Creditor is bound by Hindoo Law first to establish his demand against the original debtor, before he can come upon the Security for that debtor, to pay the debt, wherefore the Suit against Respondent as Widow of the Security was dismissed.

Respondent

(1) Vide Case No. 37, " The wife and the daughters also" &c.

Respondent denied all knowledge of her late husband's transactions, and of this in particular, and demanded of Appellant why he had not come forward during the life time of her husband.

The Court called for the Bond, which was not only altogether without witnesses, but made payable in four months, and the Security lived about five years after it was executed. The Security of Gungadass was noted at top, and appeared to have been conditional, saying. "If the principal *say he will not* "pay the amount of this note the debt is mine, that is the "sum due on the pledge, and payable on the appointed time." Appellant had blotted out the words "*say he will not*" and made it read, "I am the principal Debtor in the amount "of this note, &c." Appellant wanted to prove that Gungadas made this alteration, but besides that there were no witnesses, he himself sued Respondent *on the Security*.

The Judge held that Appellant was bound, by the Laws of the Hindoos, to prove the debt in the first instance against the principal, and on failure of payment by him, against the Security, and that it was more than probable the sale of the Pledge by Appellant had cancelled the debt. On these grounds, and from the suspicious appearance of that part of the note which would be binding on Respondent, the suit was dismissed, Appellant paying Costs.

Suit dismissed 3rd January 1810.

Court of Appeal, N. Crow. *Chief Judge*, T. Day. *Actg. 2d do.*

The Court of Appeal concurred in this opinion, and thought Appellant's conduct in disposing of the Pearls, altering the Terms of the Security, and keeping back until the security was dead, and all knowledge of the transaction gone, very unfair, and declared him not entitled to recover from Respondent. Costs in Appeal were again given in favor of Respondent.

Decree 1st July 1811.

Sudur Udalut. Sir E. Nepean. *Pres.* G. Brown, J. Elphinston, A. Bell.

The Sudur Udalut put this Question to their Law Officer, on the case coming before them. "By the Law of the Hindoos, "when money has been lent to one man, and another has pro-

"mised

" mised to pay the money, if the debtor fail to do so, may the " security be sued without having recourse to the Principal?" He replied, An Action must first be brought to recover from the person who borrowed the money. If the Principal do not pay, then the Creditor must recover from the security; an action cannot be brought in the first instance against the Security. (1)

Upon this Vyuvustha the Appellant's claim was further dismissed in the Sudur Udalut, he bearing all Costs.

Decree 6th Nov. 1813.

N° 23.

DADA BHAEE ROOSTUMJEE.....APPELLANT,

VERSUS

NANA BHAEE MUNCHURJEE Manager of The Firm and Estate of the late RUTTUNJEE JUMSHEDJEE Bankrupt, } RESPONDENT.

THIS was an Appeal perferred against an order of Court passed by the Zilla Judge upon the comparative merits of the Decrees of the Plaintiffs in thirteen different Suits, filed by them against the Firm and Estate of the late Roostumjee Jumshedjee, a Bankrupt. The Amount claims of all the Creditors against this Estate, was Rupees 10,393-0-71, exclusive of Rupees 525-1-39 Costs

Surat Udalut. Bankrupt's Estate sued by 13 Persons, Creditors, S. Bourchier, *Judge.*

Appeal against an Order of Court passed by the Zilla Judge after consideration

(1) The following passage on the subject of Security occurs in the Runadanu Prukurnu, or chapter on payment of debts, of the Muyookhu, " New Surety" (Prutibhoo) " is of three " kinds according to Yagnyuwulkyee who says," Let security be undertaken for appearance, " for Trust, and for Payment," Trust here means Raising of confidence by saying this " man is true. Bruhusputee again enumerates four kinds of Sureties of whom—the " first says, I will point him out; the second, this man is trust-worthy; the third, I am " the payer of this money—the fourth, I will give it, which last means, I will hereafter cause " the debtor to pay this debt. Katyayunu says " Let three full Pukshu, or half Lunar " months, be allowed" (to the security) " for the purpose of seeking an absconded " Principal, and if he point out the principal, then let the surety be held worthy of " being

of the respective claims of the Judgment Cr ditors of a bankrupt.

Court first set aside the Simple Contract Claims in favor of those of three persons setting up mortgage Titles, because the only Assets were Sale Proceeds of that mortgaged property—Third Mortgage having been thrown out because unregistered tho' passed since establishment of a Registry Office, the Court gave up the Proceeds to the earliest in date of the two remaining Deeds. Court of Appeal affirmed this Order, which was reversed by the Sudur Udalut in favor of the second Mortgage, because supported by a Title Deed.

Costs incurred by filing their respective suits, while assets to the amount of Rupees 1,500 only were forthcoming to liquidate it, viz. the Proceeds of the Bankrupt's House, sold by order of the Udalut. There was another House in the management of the Estate, but it was only mortgaged to the deceased, and the incumbrance was being gradually cleared off by the owner. The Court held, that the assets of the Estate being derived entirely from the sale of the Family House, which stood separately mortgaged to three distinct Creditors, the claims of the mortgagees must be considered before those of the other, or simple contract, Creditors. The claim of Dyaldass Laldass, the first Creditor and mortgagee, was on a note of hand dated A. S. 1849, or A. D. 1793 for Rupees 700, and in security for this debt, the Family House, since sold, and that held in mortgage by the Bankrupt, were both made over to him.

The second mortgage claim was by Dada Bhaee Roostumjee the fourth creditor, who held a Sameedustkhut dated A. S. 1854 (or A. D. 1798) for Rupees 538, the balance of an old account; and the family house stood pledged to him also, by transfer of that Deed whereby the Bankrupt became sole Proprietor of the House by purchase of the shares of his two Brothers therein. Hormuzjee Jumshedjee, fifth creditor, was next, having a Sameedustkhut of A. S. 1858, or A. D. 1802, for Rupees 325, and holding the original family title deed of the house in the name of Jumshedjee Ardaseer, the Bankrupt's Father. It appeared that Duyaldass Laldass obtained judgment on his claim against the estate in July 1802, and both the houses were attached,

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" being absolved." The three half months are to be understood only as an example, " meaning that so much time must be allowed as is required for the search, for Katyayunu " himself says again " should the surety for appearance not point out his principal according " to time and place, he must make good what he is bound for unless" (payment by the " principal be)" prevented by the act of God or the King. Now what he is bound for " means the debts due by the Principal—Bruhusputi says "The two first" (kinds of Sureties) " must then be made to pay their broken Engagement, when the debt is sued for. The " two last, or in default of them their issue, on breach of promise to get it from the Princi- " pal." Vide Cole. Dig. 1st 233-239-241-2.

attached, with an order for their Sale in November following in liquidation of it, unless some arrangement were made by the manager of the Firm before that time. The sale never took place, partly because the manager was put in Jail to answer demands of another creditor, and because the Firm had only a mortgage interest in the second house. The manager had paid the greatest part of the money received by him in redemption of the house mortgaged to the Firm, to the second mortgagee, Dada Bhaee Roostumjee, (Appellant) and for the Balance of his debt, Rupees 538, mortgaged the family house to him in 1854 A S. as above shewn, though previously made over to Dyaldass. Appellant Dada Bhaee, was a judgment creditor in the amount of his mortgage, under date 17th September 1808. The third claimant's Deed would not admit of consideration, as it was unregistered, though passed after establishment of a Registry Office. Between the two remaining claims, of the first and second mortgage, the Judge gave the preference to the first in date, deeming the second inadmissible, the right of the estate to the house having been previously made over to Dyaldass, as mortgagee, and the manager was consequently incapable of making over to a second, what he had already assigned to the first person.

The proceeds of the Bankrupt's estate, Rupees 1,500, were therefore delivered up, by an order of Court, to Dyaldass Laldass, leaving an appeal open to any of the remaining Creditors against this order.

Order of Court 13th April 1811.

Dada Bhaee Roostumjee conceiving himself aggrieved, perferred an Appeal, praying for a Rule to annul the order of Court whereby the Decree in his favor against Respondent had been set aside, for that obtained by Duyaldass Laldass against the same Estate. He grounded his claim to prior consideration, on his having given up the Interest of his debt, waited a whole year by consent for the principal, and the house having been sold to satisfy his, Appellant's, Decree.

Court of Appeal, N. Crow, *Chief Judge*. J. Romer, *Actg. 3d do.*

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The Court agreeing in opinion with the Zilla Judge, that the claim of Dyaldass was far superior to those of any of the other Creditors, and approving of the Order passed by him upon the respective claims of the creditors to the Estate, passed a Decree, affirming it against the Appeal of Dada Bhaee.

Decree 14th Oct. 1811.

Sudur Udalut, Sir E. Nepean *Pres.* G. Brown, J. Elphinston, A. Bell.

The Sudur Udalut thought an actual inspection of the original Deeds held by each of the three claimants under a Mortgage Title to be necessary to a fair decision.

The Court, on obtaining them, agreed in throwing out the claim under Mortgage of Hormuzjee Jumshedjee, for the reason given by the lower Courts. On examining the Bonds held by the other two, they were found to be nothing but Notes of Hand, both unattested by a single witness, but each of them making over the House in dispute, as Security for the respective debts. The Judges unanimously held, that of these, the Bond in possession of Appellant Dada Bhaee, supported as it was by a deed conveying a good Title to the House, ought to be confirmed in preference to that held by Dyaldass Laldass, which could of itself convey no good title to possession, in the event of his wishing to transfer his Mortgage to another.

Decree 9th Sept. 1814.

The decree of the Provincial Court, dismissing Appellant's claim to redress, was consequently reversed, and a decree passed in his favor of Rupees 538, the amount of his debt, and Costs.

NOTE. The power of the Zilla Court to collect all the creditors of a Bankrupt, and make a division of the Estate, appears fully admitted by this decision, for the claims of the three principal creditors were upon their Mortgage titles, and the decrees of Court were not only not considered, but the prior decree set aside in favor of another Mortgagee.

N°. 24.

VEESAJEE GOPALJEE JALA.....*Respondent*,

VERSUS

Choorassumas,

BAWAJEE BULYAJEE, and NUTHOOJEE, VUNAJEE and REWAJEE, Sons of BULLIAJEE BHIKAJEE RAJAJEE; DADA BHAEE; and PUTHA BHAEE and RAMJEE JEETAJEE; CHANDA BHAEE GOYA BHAEE and BHOJAJEE,..... } *Appellants*.

Kaira Udalut.

Nos. 1806, " 1807, " 1808 & 1809 } of 1808.

Robt. Holford, *Judge*.

THE Respondent filed these four suits against the proprietors of each of the fourth shares of the Village of Wagur, Purganna Ranpoor, to recover possession for fifteen years, from each and all of them, of their respective shares which stood assigned to him under distinct Leases for the Term of 21 years, of which six had expired.

Suit to obtain possession during fifteen years, of a village formerly held by plaintiff (Respondent) during six years under a 21 years lease from Appts. who had since ejected him. Fourteen years' further possession, or until full liquidation of Respondent's demands, decreed by the Zilla and Provincial Courts. Sudur Udalut held that Respondent had sufficiently remunerated himself during his actual enjoyment of the village, and dismissed the claim.

Respondent set forth, that the Appellants gave him leases for their respective shares, including altogether the whole Village of Wagur, in A. S. 1848, or A. D. 1792, to hold it for the Term of 21 fruitful years from the dates of the Leases, it being specified in them that Appellants should keep one fourth of each share, the profits of such share, and whole of the remaining three parts being assigned to Respondent by this arrangement for paying off their debt to him. Respondent held the Village agreeably to this until 1853, (A. D. 1797) being six years. Appellants then left the village on Barwuttace, and disturbed him in possession, but he kept on until 1856, when they laid waste the village. Respondent rebuilt it in 1858, but in 1859, or A. D. 1803, Appellants resigned the village to the Hon'ble Company, to whom Respondent gave it up, and now sued to make Appellants allow him fifteen years further possession, urging that he was only bound to credit them for six years, because

because they had molested him, and cut off the actual profits, besides putting him to expense in maintaining a force of Sebundees to defend himself against their attacks, for all which he intended to sue them separately, by virtue of a stipulation in the Leases. He estimated that his profits from the whole village would have averaged Rupees 1,193-3-00 per annum.

Appellants said that they gave up the Village originally to Respondent in the year A. S. 1814 or A. D. 1758; to hold three-fourths of it for 18 years, but he paid them nothing, whatever for three years, until one of the Appellants having incurred an expense of Rupees 3,750 in a quarrel with the Thakoor of Gouf, and which debt had doubled itself, Respondent paid them Rupees 7,500, and this was all they had received in Consideration of the Leases they had granted to Respondent, and he had enjoyed so long possession under. They had demanded restoration of the village after expiration of the first Term, and a meeting of the Jalas, and Choorassumas, held in A. S. 1845, or A. D. 1789, at the village of Chokree, determined that a statement of the account between Respondent and them, Appellants, should be made, and a balance be struck, but this was never done. They had several times been obliged to abscond because of Respondent's conduct, and said the present Leases had not been obtained until force was employed to make them sign them, and they had not received the full value for them.

Respondent in reply admitted that the original debt for which he took the village on Lease, was Rupees 7,500, and said he had offered to restore the village, and annul the Leases, on receipt of the full amount of his debt. He admitted too, that he had held the village on the former agreement since A. D. 1758, but it was only settled and begun to be cultivated in A. D. 1763.

By the Terms of the Leases the Appellants made over to Respondent, in their respective shares, three-fourths of the village for 21 years, Appellants nominally retaining the other remaining

remaining fourth, but the profit of this fourth alone was to go in liquidation of their debts, interest at 24 per Cent per annum, going on at the same time in Respondent's favor, and Appellants binding themselves to pay, at the expiration of the 21 years, or give a Bond for, whatever balance remained then unpaid; but it was stipulated that the village should be released within that time, at any period when the sum was repaid, and the Appellants were to be allowed to retain a certain portion of land in the village for subsistence. They bound themselves to make good all losses and damage that might happen within the Term of the Leases from the act of God or the king.

Respondent exhibited Bonds for Rupees 13,854, being principal and Interest of the original debt, increased by after payments, for liquidation of which the above Leases were given, as mentioned in these Bonds. The same Interest of 24 per Cent was stipulated, as mentioned in the Leases.

The Appellants produced a letter from Respondent to one of them, agreeing to deliver up the Village on receipt of the full amount of his debt, how much not specified. They likewise brought forward a dispute about a mare carried off by him, and broke out into an accusation of his having uttered threats of murder, in excuse for their having given Respondent so much trouble when they quitted the Village on Bar Wuttace.

The Judge considered that the reasons Appellant's had assigned were not satisfactory for molesting Respondent, and that he could not have acted so violently, because the expense necessary to defend himself would make him desirous of keeping them quiet. The Court endeavoured to ascertain from Respondent's account of the produce of Appellants' shares, what remained due from them. In this account which was for all transactions up to A. S. 1846 or A. D. 1790 he debited them 20,782, credited by Rupees 10,392, leaving a Balance against them of Rupees 10,390. This they disputed, shewing another account, Balance in favor of themselves. From the confusion and intricacy of these

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these accounts, it was found quite impossible to obtain a true statement, and the Court took the amount of the Bonds, Rupees 13,854, as the original debt to be now accounted for, considering all former accounts to have been adjusted at the date of them, in A. D. 1792, or 1848 A. S. It was decreed that Respondent enjoy the Village of Wagur for the 14 unexpired years, commencing on the 1st May 1808, or 5th Vyshak Sood 1864, under the terms of the Leases. That he likewise receive simple Interest at 9 per Cent per annum upon the Bonds, from 5th Kartik Sood A. S. 1859 or A. D. 1803, the date of his being deprived of the Village, to the 1st May 1808 above, the date of attachment of it by the Honorable Company. That when the amount annual proceeds of Appellants' Chouth, or fourth share, had equalled or exceeded the sums due to Respondent, he should restore the Village, agreeably to the stipulation in the Leases. That in liquidation of Respondent's claim he had during his 7 years full possession received Rupees 5,088:2:50, and no more, from the Appellants' Chouth; and the parties should continue to settle their account annually, any dispute being referrible to the Court.

Court of Appeal, J. Smith, *Chief Judge*, Thos. Day, *3rd do.*

Appellants complained against this decision, when the Court of Appeal held that the Leases must be considered the voluntary acts of Appellants, as nothing had been adduced by them to prove violence or restraint on the part of Respondent, and their having resided peaceably at Wagur seven years after execution of the Bonds and Leases, bore out the Court in declaring them Deeds given by the free Will of Appellants, and in confirming the Decrees of the Kaira Judge against Appellants, whose claim for reversal was dismissed accordingly.

Decree 11th June 1810.

Sudur Udalut, Sir E. Nepean, *Pres.* G. Brown, J. Elphinston.

The Sudur Udalut on the contrary observed, that the sum total which appeared from the Bonds to have been then due by Respondents was Rupees 13,854, in liquidation of which Respondent in his Petitions, acknowledged he would have received, or that he had lost by non-possession, receipt of, Rupees

Rupees 1,193-3-00 per annum, or during 21 fruitful years, 21 times that sum viz. Rupees 25,068-3-00, besides which Appellants were to be chargeable with 24 per Cent interest on the Principal of the Bonds. This again was only the profit of one fourth of each share, or of the whole Village, it appearing by the Bonds and Leases quite clear, that the remaining three fourths were to be, and had been accordingly, held by Respondent without Appellants being entitled to have credit for the Proceeds.

The Court endeavored to ascertain the real state of the account between the parties, from the date of the Bonds to the present time, assuming from the Proceedings that it was not necessary to go further back than that date; that the Bonds were voluntarily given; and that the Leases ought to be no longer binding on Appellants after the value or amount of the Bonds had been realized by Respondent. And here the Court found themselves under the same difficulty the Zilla Court had experienced, as no correct nor intelligible account could be made out. It however would be "just and fair to adhere "to the Law of the country, that whenever the Interest of a "Debt equal the Principal, the Debt cannot be further increased," and after the best and most moderate calculation the Court could form from the Accounts, it appeared that the balance taking Receipts during Respondent's actual possession hitherto, would rather exceed the full amount Respondent could be entitled to under the Bonds, than leave a Balance in his favor.

A Decree was therefore passed reversing those of the lower Courts, annulling the Bonds and Leases, as fully satisfied, and decreeing to Appellants restoration of their village of Wagur, with all proceeds levied during the attachment of it by Government, and lodged in the Udalut.

Decree 2nd Sept. 1814.

No. 25.

N°. 25.

KHOOSHAL KISHUNDAS.....Appellant,

VERSUS

LUKMEEDASS KISHUNDAS.....Respondent.

Surat Udalut S. Bourchier, *Assist. Judge*.

Claim to recover the Balance of an account Current, Defence rested on the Statute of limitations,—Evidence to prove admission of the truth of the demand tendered, but refused by both lower Courts as inadmissible no the score of Relationship. Pundit of the Sudur Udalut declared it admissible, and it was accordingly taken, but not being satisfactory, the claim was eventually thrown out.

THIS suit was filed on the 3d January 1809 by Appellant to recover from Respondent Rupees 901, balance principal and interest of an account current in the name of Respondent's father, leaving the above balance at the commencement of the year A. S. 1855, or A. D. 1799, in Appellant's favor.

Respondent denied all dealings with Appellant since the year A. S. 1851 or A. D. 1795, and declared he knew nothing of this debt.

The Court examining Appellant's Books found the account was of as old standing as A. S. 1846, or A. D. 1790, about 19 years before filing the suit, and the last payment was in A. S. 1851, or fourteen years since. Appellant explained that he had brought the account up by interest to A. S. 1855, or A. D. 1799, but Respondent urged this was merely to make the claim actionable, by bringing it within the limitation of 12 years.

Appellant finding the decision about to be given against him, then said Respondent had owned the debt and agreed to compromise it, at a time when he was about to prevent Respondent mortgaging his house. Appellant named two Witnesses to this acknowledgment, Motee Gopal and Khooshal Dhoollubh, but Respondent objected to their evidence being taken, as inadmissible on the score of relationship, Motee being Appellant's first Cousin by the Mother's side, the other his Brother's Father-in-law.

The Court thought the manner in which the Witnesses were first named by Appellant gave room for suspicion, and the relationship

relationship between them, rendered their evidence quite inadmissible to bring the claim within the limitation of 12 years. The Suit was therefore dismissed, as not cognizable under Section 13th of Regulation 1st of 1800.

Suit dismissed, 12th May 1809.

The Court of Appeal also declared the evidence of Motee Gopal and Khooshal Dhoollubh inadmissible according to the Shastr, in proof of Respondent's acknowledgment of the Debt— Appellant then named another, Narayun Moolchund, but the Court held that one witness alone, though no objections were offered to him, was incompetent to establish the fact, and the claim was dismissed in Appeal under the same Regulation.

Court of Appeal, N. Crow, *Chief Judge*, Thos. Day, *3rd do.*

The Sudur Udalut on the case being brought before them, put the following Question to their Pundit.

Sudur Udalut.

Can the Relatives of principals be admitted as evidence to prove claims on Books of account, or Promises of adjustment of such claims, by one Party to the other? If very near Relatives are not admitted, may not those further removed, as a cousin by the Mother's side, or a Brother's Father-in-law, be called as Witnesses?

The Pundit replied, The Vyuvuharu Muyookhu in the Sakshi Prukurnu has these words of Munoo (Ch: 8th V. 70th) " On " failure of witnesses duly qualified, evidence may in such cases " be given by a Woman, Child or old man " (of more than Eighty years of age); " by a pupil, by a Kinsman, by a slave, " or by a hired servant." Narudu however says, upon this " that if the Brother have not separated, he cannot give evidence." (1) There is no prohibition in the Shastr about receiving the evidence of a Cousin by the mother's side, or of a Brother's Father-in-law (2)

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(1) The Dayu Vibhagu of the Mit: Book Second, leaf 62nd, page 2nd, concludes with these words of Narudu, " Separated, but not unseparated, Brethren, may reciprocally " bear testimony, become Sureties, bestow gifts, and accept presents." Cole. Mit. 2nd.

(2) The Shastree evidently understands the word Bundhoo in its confined sense " Brother" instead of the general one of " Cognate kinsman" which includes a maternal Cousin, in which

The Court thereupon issued a Precept to the Court of Appeal, for taking the evidence of all three witnesses, for examining the Books of Appellant for 1799 in which he asserted Respondent had entered an acknowledgment of his debt, and for obtaining Answers to the above Question, about the evidence of Relations, from the Pundits of both the lower Courts.

By the return to the Precept it appeared, that no entry or acknowledgment was ever made by Respondent in Appellant's Books, and that the three Witnesses could only prove a dispute about the account between the parties, but no admission by Respondent of its being due.

The Shastrees of the Court of Appeal in answer to the Question, said, According to Vrihusputi, the following persons are Relations of the first degree and their evidence is inadmissible in a Civit Suit. A Father, ; Son; Brother; Father's Brother; Brother's Son; Mother's Father; Mother's Brother; Father-in-law; Wife's Brother; Son-in-law; a Gooroo, or spiritual Teacher; and a tried Friend. (3) He also, with Katyayunu and Narudu, prohibits admission of the evidence of the following Relations further removed, Cousins, being Sons of a Father's

Sister

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which sense it is taken by Sir William Jones in the above verse of Munoo, Vide succeeding Note (4).

(3) In the Sakshi Prukurnu of the Muyookhu are these words of Bruhusputi. "The "evidence of a Mother's father, of a father, and of a father's Brother; of a Wife's Brother, "and her maternal Uncle; of a Brother and his son, a friend, and a daughter's husband, "is inadmissible in all disputes." The Vyuvustha however was drawn from the same words of Bruhusputi in the Vyuvuharu Purisishthu, in confirmation of this verse of Katyayunu, therein quoted, "Those who obtain a livelihood from the disputant's profes- "sion, and Servants interested in their Master's prosperity; a brother, a real friend, and "a trust-worthy domestic, being all considered confidential, their evidence must not be "taken—A Maternal Cousin, and also a Brother, a son, and a Maternal Uncle, are all "denominated "sprung from the same root" (Navel or womb) and their evidence must "not be called for. Persons related by birth, or newly connected by marriage, and "also a Wife's nearer relations; a Sister's husband, a father, a brother, a paternal Uncle; "a Wife's father, a spiritual preceptor; the Magistracy of the City, Village, or Coun- "try, and a dear friend, must not be calledupon."

Sister, or of a Mother's Brother and Sister. (4) Neither, say they, can the Brother of a Wife's Mother give evidence. (5) The Shastr sayeth nothing respecting the evidence of a Brother's Father-in-law.

The Zilla Law Officers stated, Katyayunu and Vrihusputee hold the evidence of the following Relations to be inadmissible in claims, as the present, upon Book accounts:—Father; Brothers; Father's Brothers; Father-in-law; Spiritual Teachers; Sons; Brother's Sons; Mother's Brothers; Mother's Father; Wife's Brothers; and Sons-in-law. Naruda and Katyayunu further say, that even more distant relations, as a Cousin on the Mother's side, in this instance cannot give evidence, but there is no objection taken by any of them to a Brother's Father-in-law.

From all these proceedings the Sudur Udalut found the Appellant still could not "shew by clear and positive proof," as required by the Regulations, "that he had demanded the "money or matter in question, and that the Defendant had admitted the truth of the demand, or promised to pay the money within 12 years from the filing of the suit." And as he had failed in doing this, the lower Court's Decrees, dismissing the claim, were affirmed with Costs.

Sir E. Nepean, *Pres.* G. Brown, J. Elphinston, Decree 2d August 1813.

No. 26.

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(4) The Atma Bundhoo or own cognate kindred. Cognate kindred are divided into the Atma Bundhoo, one's own; the Pitru Bundhoo or father's; and Matru Bundhoo or mother's, cognate kindred, and are thus laid down in the Mit. On their succession under the verse of Yagnyawulkyu, quoted in case No. 37. "The Sons of his own father's Sister, "the Sons of his own Mother's Sister, and the Sons of his own Mother's brother, must be "considered as his own cognate kindred; the Sons of his father's paternal Aunt, the "Sons of his father's Maternal Aunt, and the Sons of his father's Maternal Uncle, "must be deemed his father's cognate kindred. The Sons of his mother's paternal Aunt, "the Sons of his mother's Maternal Aunt, and the Sons of his Mother's Maternal Uncle, "must be reckoned his Mother's cognate kindred." Cole. Mit. 352.

(5) Vide note (3) above.

N°. 26.

MOOTEE TAPEEDAS, and others, the Patels and Members of the Cast of Ahmudabadkur SHREEMALEE Goldsmiths..... } *APPELLANTS,*

VERSUS

KUHANDAS, and 19 persons of the same Cast..... } *RESPONDENTS.*

Surat Udalut. S. Bourchier, *Assist. Judge.*

Suit by Appellants the Heads and certain Members of a Cast, to compel 20 persons of their Body to conform to certain Regulations, enacted for the better conducting of their public Feasts.

Appellants pleading that the Regulations were not binding because not passed by the Majority, the Court took the Vote of each individual, and finding the Majority hostile to the Regulations, passed a Decree, exempting Respondents from obedience to them, which decision was affirmed in Appeal by both Courts.

THIS suit was filed by Appellants on the 15th December 1809, to oblige Respondent to abide by certain Regulations drawn out and signed by the Cast for the more orderly conducting of their public Feasts. Appellants said that at an entertainment formerly given by Hurjeevun Lukmeechund, some of the Guests took more Food on their plates than they wanted, and carried home what they could not eat. Their Host declared he would not allow them to pocket any thing, and a quarrel ensued. The Heads of the Cast sent the officiating Brahmun or Nyat Gour, to propose a meeting of the Cast, which was accordingly held at the Dhukka Gate of Surat during two whole days, and the Result was the passing of a set of Regulations to be observed in future, and signed by Respondents among the rest. The Respondents however had broken through them by preparing a Feast at the celebration of the Ooch,hao of their Tutelar Deity Wagheshwuree, without first asking consent of the four heads of the Cast. Appellants said their consent was necessary by an old Rule, only embodied into these written Regulations, and called upon the Court to enforce the obedience of Respondents to the Regulations.

Respondent answered that so far from the Regulations in question having been passed unanimously, the majority of the Cast, on hearing of their being prepared, refused to sign them, when Appellant got the Nyat Gour, who was on their Party, to put their, Repondents', signatures to the paper, which they protested was no Act of the Cast, and not therefore binding on them.

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The Regulations purported to be drawn up under the auspices of Wagheshwuree, and were dated Wednesday 11th Bhadrapud Sood A. S. 1865 or 19th September 1809, and after reciting that they were made with the consent of all, it was Resolved:—

1st. That any Seth, or Ruyut leaving broken victuals at a Feast, pay a fine of 4 pice.

2d. That the fine to be taken from a person carrying away any Victuals, be, from one of the three Setheeas, or Head men, Rupees $2\frac{1}{2}$ and from a Ruyut Rupee $1\frac{1}{4}$—The Host wishing to send away Victuals to any one is to do it the next day.

3d. That no person be allowed to distribute the Victuals, but those requested to do so by the Host. Any person interfering in it without being asked, to pay a fine of Rupee $1\frac{1}{4}$—

4th. That the men of the Cast do not go in until the Women have got up from Dinner, and the ground has been swept and cleaned, and the Host has called in the men. Any person offending against this, to be fined Rupee $1\frac{1}{4}$—

5th. That Lassee, (a particular sort of food) be allowed to be left.

6th. That each person, on going to dinner, take one patul and two Dhurreeas only, under a penalty of 4 pice.

7th. That the persons who undertake to wait upon the Cast during dinner, shall hand salt, water, and vegetables, to every person requiring them, under a fine of Rupee $1\frac{1}{2}$ on refusal.

8th. That the Cast commence eating on permission from the Brahmun.

9th. That any person Seth, or Ruyut, refusing to pay the fine prescribed for his fault, be excluded from future dinners till he pay the amount.

10th.

10th. That any person, of whatever rank in the Cast, deviating from this agreement, forfeit 51 Rupees to Government, and lose Cast for a whole year.

11th. That this Paper be lodged in the Temple of Wagheshwuree, and that Bhaee Tooljaram (the Priest) be bound to give a sight of it to any member, under penalty on refusal of a fine of Rupees 5.

This Paper bore the signatures of 173 persons, but as Appellants admitted that the signatures of Respondents were written by the Gour, though by Respondents' desire, the Court called up the whole of the Cast, and taking the vote of every individual member upon the Question, found a majority of fifty seven against these Regulations.

Decree, 8th June 1810.

The Court decided thereupon that it was neither consistent with Justice, nor within its province to make the majority of a Cast conform to the wishes of the few, and dismissed the suit, recommending to the Parties to arrange matters, as the Respondents appeared inclined to agree to some of the Rules proposed, though they would not give consent to all of them.

Court of Appeal, Thos. Day, *Act. 2d Judge* Jn. Romer, *Act. 3rd do.* Decree 31st August 1811.

The Court of Appeal concurred fully in the Decree of the Assistant Judge, observing that according to the verbal opinion of their Shastrees the consent of the majority of a Cast, at least, if not of all the members, was necessary to make any act or Rule binding among them. The Appeal was therefore dismissed with recommendation to the parties to accommodate the dispute.

Sudur Udalut Sir. E. Nepean, *Pres.* G. Brown, J. Elphinston. Decree 14th Feb. 1814.

The Sudur Udalut found itself under the necessity of affirming these decisions, regretting at the same time that Appellants should fail in establishing Regulations calculated for the order and regularity of their Cast meetings.

No. 27.

FATIMA BEEBEE.....*Appellant*,

VERSUS

MOOLLA ABDOOL FUTTEH.....*Respondent*.

Surat Udalut. S. Bourchier, *Assist. Judge*.

APPELLANT on the 10th August 1810 filed her suit in the Zilla Court, to recover 38 Shops, valued at Rupees 2,500, situated round the Mosque in the Chouk Bazar opposite the Foorzah.

Claim by Appellant to be allowed to exercise her right of redeeming from respondent, certain Shops belonging to her Family by one of whom they stood assigned in Mortgage to Respondent's ancestors.

Respondent pleaded ignorance of the Title by which his Family had obtained the Shops, but rested his right to retain them on length of possession.

Zilla Court inclined at first to consider the property unalienable because Wugf. and to uphold Appellant's right of redemption; but ascertaining that the Sale of Wugf is allowed by Custom though not by the Moohummudan law, whilst Appellant could not shew that the Transfer was by Mortgage, & not by Sale, the Shops were adjudged to remain with Respondent, in a Decree which the Courts of Appeal and Sudur Udalut affirmed.

She said that her ancestor Mouluvee Abdool Uzeez obtained a Purwanu, dated 7th Rumzan Sunnu 19 Alumgeeree, or 138 years before, from Nuwab Ghyasood Deen Khan, attested by the seal of Mooftee Ahsin Oolla, to enlarge and make public this mosque, belonging to him, and to build round it Shops, from the rent of which the mosque was to be endowed and kept in repair, any surplus remaining after payment of all expenses to be appropriated to the use of the Founder and his Family. The shops in question were mortgaged upwards of 90 years ago, Appellant said, by the Grandson of the Founder, to Moolla Moohummud Alee, Grandfather of Respondent, for Rupees 1,400, and had continued in possession of the latter thus long from the power of Respondent's Family, by which that of the Founder was unable to recover them. Appellant being regularly descended from Mooluvee Abdool Uzeez, claimed the right of Redemption of this property, her inheritance.

Respondent declared himself quite ignorant of the right, or mode, by which his Grandfather got possession of the shops, and rested his claim to retain them upon "Qubzun Duleelun," or "Law giving Title by length of possession."

Appellant exhibited, with the Purwanu, a Tukseem Namu, of which the date could not be ascertained, whereby Moohummud Afzul, the Son of the Founder, divided with his own Nephew Suyud Oollah, Son of Moohummud Suyud, the whole

of

of the shops, in number 42, each taking 21, and agreeing to contribute to the repairs of the mosque out of their respective shares; and a certificate, granted to Moohummud Suyud Oollah as a Title Deed by 24 principal inhabitants of the city, that Mouluvee Abdool Uzeez founded the mosque, and built the Shops round it.

Also a mortgage Bond dated 29th Suffer 1132 Hijree or 1717 A D. of one Shop mortgaged by Moohummud Suyud Oollah to Moohummud Alee, Respondent's Grandfather, for Rupees 400. Appellant explained that four of the Shops were now in her own possession, and that she was able to produce this mortgage Bond and not that of the other Shops, because this had been redeemed and the Bond returned, but the other remained of course with Respondent, till cancelled by redemption.

Respondent denied possession of any Title Deed of the Shops whatever, but allowed that Appellant had possession of four of the other Shops, and that her son was Imam of the mosque, and read the Khotbu and Imamut on Fridays, but he said those duties had no connection with the shops.

The Court considered it proved that Abdool Uzeez was the Founder of the Shops, and then endeavored to discover how Respondent's family got hold of them, and the validity of their Title. The property was evidently Wugf, " assigned for pious purposes," and the Law officers declared " Property of the nature of " Wugf cannot be sold; no time is sufficient to make a mort- " gage absolute; if any period is agreed on, such mortgage " is illegal, for lapse of time has no effect." The Court supposed that the only lawful way in which it could have come to Respondent was by mortgage; now Appellant could not prove this, and accounted for the difference between 400 Rupees advanced upon the one shop, and only Rupees 1,400 upon 38 others, by the Law of Wullut Kirayu, whereby the Rent, or Profits, liquidated the whole of the Interest, and part of the Principal. This again could not be shewn, and Respondent said Wugf Property was frequently sold. The Moohummudan

Law

Law officers admitted that the custom of Surat and many Moohummudan Towns, permitted the sale of Wugf property contrary to the Law which they had stated above.

Respondent pleaded also the limitation of 12 years possession, but Appellant quoted a parallel mortgage case of 50 years standing, entertained and decided upon its merits, viz.

SORABJEE KAOOSJEE,.....*Appellant,*

VERSUS

HUBEEBU KHANUM, and others, Daughters of MEERZA MOGHUL,.....} *Respondents,*

Reported as "No. 2 of the Suits for Landed Tenures heard "before the Court of Appeal." On this precedent the Court overruled Respondent's objection.

He then exhibited a Will in the manner of a Wugf Namu, by his Grandfather Moohummud Alee, (whom Appellant called the original mortgagee) declaring these shops to be his own exclusive property, making them Wugf, and appointing Respondent's Uncle the Trustee of them.

The Court finally decided that as Appellant could not shew the shops to have been held in mortgage, whilst the sale of Wugf property was allowed to be common, and Respondent had held possession during so long a period as 95 years, he could not be ejected without better proof, and the probability of a sale was equally strong as that they had been made over to Respondent's family in mortgage, so the suit was dismissed. Decree 21st Nov. 1810.

The Provincial Court concurring in this opinion, dismissed the Appeal which Fatima Beebee prosecuted in that Court. Court of Appeal, N. Crow, *Chief Judge.* J. Romer, *Actg. 3rd do.* Decree 5th Oct. 1811.

The Sudur Udalut proposed to its Mouluvee, the same Question, and received the same answer to it, as was given in the Zilla Court. They likewise asked, whether a Son can prevent his Sudur Udalut. Sir E. Nepean, *Prest.* G. Brown, J. Elphinston.

his Father from expending the property, inherited, or acquired since, by the Father, even if such expenditure be improper or illegal? He answered, that a Son cannot interfere with his Father's expenditure of their Property, whether he be laying it out improperly or not.

Decree 9th Sept. 1811.

The Decrees of the lower Courts were affirmed, costs being borne by Appellant.

N°. 28.

ICHHA LUKSHUMEE,..... .....
Widow of } *Appellant,*
SWUROOPRAM ANUNDRAM,

VERSUS

ANUNDRAM GOVINDRAM,.....Respondent.

Surat Udalut, S. Bourchier, *Judge.*

Claim by a Brahmun's Widow aged 17, against her Father-in-law, for her Pulla, or Dowér Jewels entrusted to him by her own Father, but to the care of which she conceived herself entitled.

Defence, that Appellant's relations would squander them away, unless taken care of by Respondent, or by some trustworthy person, under the orders of the Court.

Surrender of the Pulla to Appellant decreed by the Zilla Court on the grounds of the exclusive right to keep them, vested in a Wife.

APPELLANT on the 2d April 1811 laid claim to recover possession of her Pulla, or Dowry Jewels, valued at Rupees 1,702-3-0 from Respondent, her Father-in-law, stating, that her own Father Roop Narayun Huree Narayun previous to becoming a Sunyasee, or Devotee in A. S. 1861, or A. D. 1805, gave the Pulla or Dowry, which had in A. S. 1854 been agreed upon for the marriage of Appellant with Respondent's son, to the value above stated, into possession of Respondent, who gave an acknowledgment for them, but would not on demand since the death of his son, Appellant's husband, deliver them up to Appellant, though she was by that event entitled to claim them, and now prayed the interference of the Court.

Respondent admitted possession of the Pulla sued for, but said Appellant's Father gave it to him for fear of his Wife and Son making away with them, as the Son had already possessed himself of part to the value of Rupees 260. He said he had maintained Appellant since his Son's death, in food and raiment, and her mother

mother and Brother had excited her to make this demand. If they once got hold of the property, they would make away with it, and leave Appellant, who was only 17 years of age, a Beggar. If his own security were not approved of, he proposed the Jewels should be sold and the proceeds be placed in the hands of a respectable Merchant, with the Interest of which Appellant would have a decent maintenance.

Courts of Appeal and Sudur Udalut held that this right does not vest in a woman till of the age of 30 years, until which time Respondent should retain charge of them, or some Banker.

The Zilla Court considered Appellant, according to the Shastr, fully entitled to possession of this property, and decreed delivery of it to her by Respondent, but made each party liable for their own costs, considering that Appellant's Father himself gave the Pulla in charge of Respondent, who had acted quite fairly.

Decree 7th May 1811.

Anundram appealed to the Provincial Court against this decision, urging the danger of Respondent being left destitute, by her greedy relations, and claiming a title to her Guardianship as her Father-in-law. A question was proposed to the Shastrees, whether a Hindoo widow can, according to the Dhurm Shastr, imperatively demand, and receive possession of her Pulla or Dower Jewels from her Father-in-law, without assigning cause, or acquainting him with the use she intends to make of them, and at what age a Widow is allowed to take charge of her Pulla? The Pundit replied, when a Widow has attained the age of thirty years, she is entitled to possession of her Dower. (1) The Pulla is her sole property, (2) but until she obtains the above age, it is to be taken care of by the Paternal relation of her late husband. If none survive, then it must be taken care of by her parents, and if they also are dead, then by some trustworthy relations. In the present case, according to the Vyuvuharu *(Muyookh?)*

Court of Appeal,
N. Crow, *Chief Judge.*
T. Day, *Acting 2d do.*
J. Romer, *Do. 3d do.*

(1.) As a child under 16 is declared unfit to take charge of property, even so a woman under 30, as being till that age under the dominions of her passions, may be supposed unfit to take charge of her own property. I find no direct authority for this Vyuvustha, which would virtually annul the right a woman possesses over her own property and exercises too, as every day's practice proves. Munoo ch. 8th, v. 27, 28. for the guardianship of a child and a woman. Also Munoo ch. 9th, Verse 3d, and Mit. quoted in note (12.) to Case No. 43.

(2) Vide note (4) to case No. 14.

(*Muyookh?*) she, Appellant, is to apply to her Father-in-law for food and raiment, and expenses of pilgrimage according to his means, and he cannot refuse, but she is not entitled to take the Dowry from him without sufficient cause, for "Wealth intoxicateth Youth."

Decree 25th October 1811.

The Provincial Court therefore decreed, that Appellant could not imperatively demand possession of her Pulla from Respondent without assigning a cause, and acquainting him with the use to which it was to be applied. That Appellant, or any Hindoo Widow, has not unlimited power over her Pulla until she has reached the age of thirty years, but if Appellant had not confidence in Respondent, the Jewels might be deposited with some respectable Banking House mutually agreed upon.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, J. Elphinston. Decree 21st Feb. 1814.

On Ich,ha Lukshumee appealing against this decision to the Sudar Udalut, that Court expressly asked their Pundit's opinion of the Vyuvustha given in the Provincial Court, and he giving his unqualified assent to the doctrine laid down in it, the decision of the Court of Appeal was fully affirmed.

N°. 29.

HUKEEM GHOOLAM MOHEE-OOD-DEEN, APPELLANT,

VERSUS

NUWAB SUFDUR JUNG BUKHSHEE, by his Wuk.el GOKOOLNATH,..... RESPONDENT.

Broach Udalut. J. Romer, *Judge.*

Claim by Respondent, an under Wuzeefadar in a Village, to assume the management of his own Share, taking it out of the hands of

THE Respondent originally sued Appellant in the Zilla Court under date 15th March 1811, to establish his right to manage his own Wuzeefa land in the village of Tham in the Broach Purgunna, yielding about Rupees 602-2-0 per annum.

The Plaint set forth that the land in question had for many years been managed by others for Respondent, and one Lulloo-

das

das Muzmooadar had lately held it, discharging the Government Revenues out of the collections, and paying the Balance to Respondent. But the Bukhshee, by giving Puttas to the Patels of the village that year, had diminished the expense of management, and increased his Income from them in proportion, upon which Appellant, a joint sharer in this village with him, obstructed him in collecting these Rents, that he might do it himself. Respondent said the land in question was his own by inheritance, and he was at liberty to manage it in any way least expensive to himself, and was not bound to keep it joined with others. He was himself ready with the Government Revenue chargeable upon it, but if the collector could look to one person alone, as known and responsible to Government for the whole of the village Revenues, and that person were Appellant, he was perfectly ready to pay his own Dues through him, but must pray that the latter might be prohibited from obstructing him, Respondent, in collecting the Rents in the first instance from his own Ruyuts on his share of the Wuzeefa land.

the Head, or managing Wuzeefadar. Resisted as directly at variance with the universal practise of Wuzeefadars, and with Wuzeefa rights.

Claim thrown out in the Zilla Court, but admitted to be just by the Provincial Court and Sudur Udalut, which Courts confirmed to Respondent the right of managing his Wuzeefa in any way he thought proper.

Appellant answered that from the day Respondent acquired this Wuzeefa from one of his ancestors, Hukeem Moortuza, to the present time, neither Respondent nor any one on his part ever collected his Rents separately, nor had Hukeem Moortuza himself done so. By the custom of the Village the chief descendant and Heir of the family of Hukeem Rooh Oollah Juhangeeree, who originally received it in Wuzeefa, had the entire management, and was alone recognized by the state, as Representative of it in all business and discussions. It was at the discretion of the Hukeem or Head, to collect the Rents in person, or delegate the duty to another, as an instance of which Hukeem Rooh Oollah Sanee, about 60 years before, appointed one Khooshal Rajaram to manage the village as Munoteedar, or security to Government, who in that capacity collected the Rents from the Ruyuts, paid the Government dues out of the proceeds, and gave over the Balance in their respective shares

to

to each Wuzeefudar. Lulloo Bhaee Muzmooador afterwards was enabled by his power to keep the collecting of the village Rent in his own hands for four years, after which the Ruyuts finding the village going to ruin by this innovation and the trouble of the times, by general consent enabled Appellant to bring and keep the management in his own hands alone. Appellant since the establishment of the Company's Government in conformity to this ancient Custom, always had collected the Rents from the individual Ruyuts; paid from their amount, the Government Revenue, and portioned out the Balance, or Profits, to each shareholder. His ancestors or himself had never permitted any Patel to collect the Rents, nor had any share ever been separated from his management by a Putta, which custom does not obtain among Wuzeefudars, neither could he consent to receive from Respondent only the Government Revenue derivable from Respondent's share, because by ancient custom, he was himself entitled to collect it from the cultivators themselves. It would never answer to let go of the land and look only to the Landlord, or Wuzeefudar, for the Revenue, because some of them were poor, and others absent, and a defalcation must then ensue. He said the Rents of the Bukhshee's share amounted to Rupees 613-2, from which deducting his share of the Revenue, Rupees 256-2, he had always honestly paid him the Balance, Rupees 357, with which Respondent's Father, the late Bukhshee, was well satisfied, and not only refrained from making separate collections, but supported him, Appellant, in his management. He denied any intention of withholding any of the Respondent's share, and the latter had been wrongly advised by some speculator to interfere, for he could lose nothing by the present mode of collecting, because the whole Risk lay on Appellant, he being bound to pay Respondent the full share without deduction when due, and depending on his own exertions for recovery of the Tukavee, which he advanced out of his own pocket, and of which there was always an outstanding Balance to be recovered. He was willing to undergo

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all this trouble and responsibility, and prayed that the established customs of his ancestors might be maintained, and the village be preserved from Ruin by a decision in his favor.

Respondent in reply maintained the right of every individual to the uncontrolled management of his own property, and the like power of a Sharer in joint property over his own Share or portion.

Appellant in rejoinder again abjured the very idea of possessing himself of Respondent's share as the latter had hinted, which he admitted to belong absolutely to Respondent, but pleaded strongly the necessity of upholding the constitution of the village and its established customs from innovation, and of supporting the rights of his Family, handed down from Father to Son, to the sole management of the village, and sole responsibility for its Revenue. He had no objection to speculative opinions, provided they were not put in practice to the destruction of every old and established custom; he, in support of his statement of the custom in this instance, offered the evidence of the whole Village.

Respondent called the adopted Son of Lulloo Bhace Muzmooadar, who deposed that he had managed the Bukhshee's (Respondent's) share of the Village for the last ten years, before which Lulloo Bhace had held it, and said he was in the habit of receiving the cash from Appellant, Hukeemjee, and sending it to Respondent. Deponent never had the care of the Village, nor appointed the Huwaldar, nor Mehta, nor received the Collector's permit.

The Son of Khooshaldas gave evidence for Appellant, that his Father held the Village as Munoteedar about 25 years before, and after making the collections on account of the Wuzeefudars, paid out of them the Government Revenue, and gave over the Balance to the Wuzeefudars, settling the Village Munotee account with the Hukeem, Rooh Oolla (Sanee), which management

ment deponent said was conformable to the Munotee system in the other Villages of the Purgunna.

The Judge was of opinion, that no adequate cause had been assigned by Respondent for introducing, with any regard to justice and propriety, this innovation on the old and established system of management in Wuzeefa Villages. Appellant was clearly bound and answerable for any deficit of the annual sum payable to Respondent, but Respondent had alleged no loss on his part, to warrant the interference of the Court. He had received the Land from his Family, under the same implied conditions with which they took it, and was not worse off than they were. Appellant would be bound to collect and account to Respondent for any higher rate his Cultivators should agree to pay, and equally so for the profits arising from any other improvement. But the strongest grounds for the rejection of Respondent's claim to management was, that if in the present suit the principle were admitted that a Minor Wuzeefudar may seperate his lands from under the hitherto collective management of the greatest and appoint a distinct manager, whether Mehta, Huwaldar or other, the same must be allowed to every claimant for the same privilege, to the great confusion of the whole Purgunna. As Respondent had shewn neither loss nor injury to result to him from the present Practice, his claim was dismissed.

Decree 20th May 1811.

When this cause was carried by Respondent before the Court of Appeal, the Judges held, that from the arguments made use of in the lower Court it did not appear that Appellant had established his Right to keep the Collections from the Wuzeefa of Respondent without his consent; no detriment was shewn to have happened during the management of Lulloo Bhaee, nor was it clear that any would occur from the appointment of another Collector. Every Owner of property was entitled to do what he pleased with it, and no other could have a right to superintendance, longer than the owner chose, for if he had, the property would lose half its value. If Appellant's claim were

Court of Appeal,
N. Crow, *Chief Judge.*
T. Day, *2d do.*

were allowed, an Overseer might be remiss with impunity, and the Landlord's interest might suffer from want of competition, the great source of improvement. The Court on these grounds reversed the Zilla Judge's decision, and passed a Decree in Respondent's favor to this effect, " that it was at his option either to continue Appellant as Rent Receiver, or not."

Decree 8th Nov. 1811.

The Judges of the Sudur Udalut unanimously concurred in the view taken of the case by the Court of Appeal, and in their arguments in support of the claim of Appellant, and the decision in his favor was affirmed with Costs.

Special Appeal Sudur Udalut Sir E. Nepean, *President*, G. Brown, J. Elphinston. Decree 20th May 1814.

NOTE.—The novelty and importance of the case induced the Sudur Udalut to admit a Special appeal in this Suit, though it was not equal to the amount declared to be appealable by the Regulations.

N°. 30.

LULLOO BHAEE GIRDHURDASS,.....APPELLANT,

VERSUS

SORABJEE, and BEZUNJEE, } *Sons of KAOOSJEE BHIKAJEE,.....* } *RESPONDENTS.*

THIS suit was filed on the 18th June 1811, to recover from Respondents Rupees 1,059-0-92, principal and Interest of a Sameedustkhut, or promissory note, passed to him by Respondent's Father on the 30th Jesht (Vyshak) Vud A. S. 1866, or 2d June A. D. 1810.

Surat Udalut. S. Bourchier, *Judge.*

Suit against two Parsees, to recover a debt, on Promissory note, of their Father. Respondents pleaded ignorance of this particular debt, and generally that they were not liable for their Father's debts,

It appeared from Appellant's statement that Respondent's Father gave at Broach to Appellant's Father a Bill of Exchange on his own house at Surat for Rupees 1,825, at 10 days' sight in payment for some liquor shipped at Broach, and consigned to Tooljaram

since they had not touched his Estate, he dying bankrupt.
Zilla Court threw out the claim on the Note, as not proved, without entering on the point of general liability.
Court of Appeal held that Parsees are to be judged by English Law, which would not hold them liable for a Father's debts unless they received his property, which not being in this case proved, the Appeal was by them dismissed as well as by the Sudur Udalut.

Tooljaram Dhoollubhram by Appellant's Father, which Respondent's Father wished his house at Surat to purchase. This was dated the 5th Vyshak Vud or 23d May, and on the 30th, Respondent's Father gave the Sameedustkhut, or Promissory Note for the amount on its being presented for payment. This Note shewed the state of the Liquor account, which, with additional charges after part payments deducted, left a Balance in Appellant's favor of Rupees 954-0-8 with Interest at 9 per Cent per annum making the sum sued for.

Respondents said their Father died a Bankrupt, leaving debts to the amount of Rupees 15,000; they had not touched a Rupee of his property, which in fact only consisted of one house, and that mortgaged to two different persons. They declared they never had any share in their Father's trade, and were not bound to pay his debts, and Appellant might institute his action against the Estate of their Father, if he chose, but could not sue them.

Appellant replied that they were living with their Father at the time of transaction, and had since his death taken possession of part of his effects, and had paid his Funeral Expenses. He urged that by their own Religion, as well as by custom, they were answerable for debts of their Father.

Respondents rejoined that the Liquor in question was first taken by the Collector to answer some demands against their Father, and that the latter afterwards sold it and paid Appellant. Thus far they knew, but still contended, that they were not bound to answer for their Father's debts, as they did not inherit his Estate, but were maintained by their employments under Government.

The Court observed, on a close inspection of the two Documents, some interpolations in a different hand, fixing the debt upon Respondents, as Sons of Kaoosjee, which rendered their validity very doubtful, and it was discovered from the Magisterial

terial Books, that Appellant had been fined Rupees 100 within the month for defrauding some persons of 44 Rupees in selling some Gold ornaments of the value of Rupees 350; his case therefore required to be excedingly well substantiated. But his only witness, the Broker Tooljaram Dhoollubhram, was his own Uncle, and his evidence consequently inadmissible. The Judge saw no necessity for examining whether Respondents were, or were not bound by their Law to pay their Father's debts when Appellant could not prove his claim to be just, and therefore dismissed the suit from the appearance of fraud on the part of Appellant.

Decree 21st Sept. 1811.

The Court of Appeal considered that Parsees as interlopers in the Country, were not bound by any Particular customs of their own, and that the Raeeje ool Moolk, founded on, or adopted in conformity to, the Shastr, differed in some degree from the usages followed by Moossulmans as founded on the Koran, and therefore the Respondents as Parsees, were entitled by the Regulations, and particularly by section 42d of Regulation 3rd A. D. 1800. to the benefits of English Law, (1) which did not admit of a person's being sued for his Father's debts, unless it be clearly proved that he inherited property from the Estate; (2) and as Appellant could not prove by witness, or point out to the Court any property which the Respondents had inherited, the Court held that Appellant had not established his claim against them, as being liable for their Father's debts, and dismissed the Appeal, leaving Appellant at liberty to file a suit against such property as he could prove to belong to Kaoosjee deceased.

Court of Appeal, N. Crow, *Chief Judge*, T. Day, *3d do.* Decree 19th Feb. 1812.

The Sudur Udalut wished to have the evidence of Tooljaram taken,

Sudur Udalut, Sir E. Nepean, *President*, G. Brown, J. Elphinston, A. Bell.

(1) The Application of this Law to the present case appears to be erroneous, as the Regulation relates to Criminal cases only, and the Section referred to merely provides for a reference to the Governor in Council, when the Court or Magistrate "feels at a loss on "the proper application of the English law in the instances of the trials of Christians or Parsees" There is nothing explicit in the Regulations on the subject.

(2) Plea of "Riens per descent," Tomlins.

taken, considering it admissible from want of other witnesses in this case, and issued a precept for that purpose, but it was certified that he had died since the passing of the Decree in the lower Court.

Decree 2d Sept. 1814.

The Judges therefore concurred in opinion with the Court of Appeal, that Respondents were not in this case liable for their Father's debts and Appellant's claim against them was dismissed, the Decrees of the lower Courts against him being affirmed with Costs.

N°. 31.

ROOKHMINEE Widow..... { *of ASARAM* } *APPEL-*
and
JUMEEYUTRAM Youngest Son { *deceased,* } *LANTS,*

VERSUS

TOOEERAM, Eldest Son of ASARAM.....*RESPONDENT.*

Broach Udalut. J. Romer, *Judge.*

Appellants, the Widow & younger Son of a person deceased, having seized the Estate left by him, the Elder Brother, Respondent, sued them and recovered a third share of the whole, *minus* the sums laid out by Appellant from the Estate on the Funeral Ceremonies. Respondent therefore sued for recovery of what he had laid out for the same purpose. Refused on the plea that

THIS suit was filed on the 13th May 1811, as No. 22,222 to recover from Appellants Rupees 3,500 amount expended by Respondent on the funeral obsequies of his Father.

It appeared from the Plaint, that when Asaram died, Respondent, his Eldest Son, was absent from Broach, but returned home in about a month, when the Appellants were about to celebrate the funeral Rites of deceased. Respondent represented to them that every thing on such an occasion should be done with his advice and concurrence as Eldest Son, when Appellants said in presence of Witnesses that the expenses should not be paid from the common Estate, but by each individually, and that he might spend what he liked. Respondent accordingly told them he should lay out Rupees 3,500, on celebrating his Father's Funeral Rites, and did so. As Appellants had possessed themselves

of

of the Estate, he demanded his share from them, and on their refusing to give it up, sued them and got a Decree No. 18,926 in his favor for one third. A Partition was made in consequence and Respondent got all that he was considered entitled to, and for which he passed a Receipt, but was obliged to allow the Appellants a deduction from the Estate for Rupees 2,130-3-56, amount expended by them on Asaram's obsequies. The object of the present suit was to obtain a like remuneration from Appellants for what Respondent had been obliged to expend out of his own Pocket, through the measures they had pursued in seizing the Estate, and refusing to defray the expenses out of the common stock.

Respondent having assisted at these funeral ceremonies of which the expense had been already deducted, any further outlay was unnecessary and not to be allowed

The Shastrees of all the Courts declared Respondent entitled to recover from Appellants two thirds of what he had laid out, which proportion was accordingly awarded.

Shastrees opinions respecting the performance of funeral ceremonies among brothers.

Appellants said that Respondent's Wife was in Broach when Asaram died, and the expenses were defrayed from the Estate with her participation and concurrence, and Respondent himself joined them during 3 months after his return, in entertainments to Byragees, and whatever else was usual and proper. These expenses were defrayed from the Estate, and carried regularly to account during the space of a year, the usual time of mourning, and amounted to what Respondent had stated, and for which the Estate had very properly been credited on dividing what was left. As Respondent chose to make an extra outlay, they did not conceive themselves bound to make good any part of it.

Respondent said his Wife absolutely declined having any thing to do in the Ceremonies, when Appellants refused her demand to let her husband's Goomashta superintend on his part during his absence. He likewise proved by witnesses, that on his return, he was induced by some of his Friends to wish the Brahmun Casts to be first entertained, and then the Byragees; but that Appellant Jumeeyutram, to whom he proposed it through his own Goomashta, refused to agree and persisted in giving the first entertainment to the Byragees.

The Shastree gave the following Vyuvustha, upon consideration

tion of this case. The Eldest Son is absolute in his Right of making the first or chief mourning expenses in the house of his deceased Father. Then the younger Sons in a smaller degree. The Eldest Son must inform the younger what amount he intends to expend upon their Father's funeral Rites, out of the estate. The younger Brother can expend no part of the estate on this account without the leave of the elder. But the Rights of Sons to the Estate of their Father are equal, therefore if any, or either of them, without the other's knowledge and participation, expend any thing on separate funeral Rites, the outlay must be borne from his own Funds. Afterwards on division of the estate, the younger having previously debited to it the amount of his own expenses, must allow his Elder Brother the same for his, or be compelled to allow him a deduction for each share in division. This opinion is taken from the Nirnuye Sindhoo.

Decree, 19th Nov. 1811.

The Judge finding Appellants by this Exposition justly liable to Respondent for their respective shares of what he had laid out, passed a Decree in his favor for two-thirds of the amount sued for, or Rupees 2,333-1-33 to be paid by Appellants with Costs of Suit.

Court of Appeal, N. Crow, *Chief Judge.* T. Day, *3d do.*

When the cause came before the Court of Appeal, they laid it before their Law Officers and obtained this Vyuvustha in answer, " that according to the Dhurm Shastr, the claim of Tooeeram (Respondent) against (Appellants) Rookhmince and Jumeeyutram for payment of their shares of his expenses, was proper, because he, as the Eldest Son, was entitled to perform the Shradh and other Funeral Rites, and Jumeeyutram should not have opposed the pleasure of Tooeeram. If the latter were not present, Jumeeyutram was at liberty to perform the Funeral itself (the act of Burning the Body) and these ceremonies deemed absolutely necessary, during that and the following 10 days (the Dusa Pind and Ekadusee Shradh). He, Jumeeyutram, was not able to perform the Supindee Kurun, on the 12th day, and the other ceremonies within the year, but

must

must await the arrival of the Elder Brother until expiration of the year. Now Jumeeyutram did not wait for Tooeeram, who came at the end of the month. Jumeeyutram had received credit from the Estate for the sum he expended, and Tooeeram, considering himself bound as Representative and Heir, made the proper outlay, in feasting the Cast at Ahmudabad and other places, and in making Luhana, or Mourning presents (generally a small Metal Pot, or Cooking utensil, with the name of the deceased engraven on it) to each family in the Cast, which was quite proper. Therefore Rookhmince and Jumeeyutram must pay Tooeeram two-thirds of his expenses, for it is an ancient Rule, founded on the Shastr, that the Eldest son shall make all expenses consequent upon the death of his Father, and deduct the amount from the Estate, dividing the Balance equally with the others." (1)

The Provincial Court therefore affirmed the Decree of the lower

Decree 19th Feb. 1812.

(1) In the third *Puricchhed* or *Section* of the Nirnuye Sindhoo, which is in three Sections, or Books, like the Mitakshura, the author, laying down the rights of Sons says, "And these" (ceremonies) "if there be a son shall not be performed by any other person. "Let not the Son returned from abroad, even though much time have elapsed, perform "the supinduta whilst the Sixteen Shradhdhs are left undone. Thus is it said in the "Vayuvee Pooranu. Even if time do not remain within the year" (appointed) "for the "Sixteen shradhdhs, still let him not celebrate (the Supinduta) "as long as they remain un-"performed, How then? Why, after having celebrated them, "should the younger bro-"thers have performed these Sixteen Shradhdhs, yet the eldest Son alone can perform "the Supindunum; so says Upurarku. The meaning is this, that no right to perform "the Supindunu vests in the younger brothers." Further on the author says, "The "Upurarku also records the words of Prucheta, "Let the Ekadusu and other Shradhdhs "in their proper order be performed in a suitable manner by the eldest son, not by each "brother separately. But the yearly or ancestral' (commonly called Sunvutsuree or Sumuchuree) "Shradhdh may be kept by each separate. And Mureechi says, If there "be many brothers, even by the Eldest alone must Shradhdh be performed; that which "is celebrated only by the Eldest, all being consenting, and defrayed out of the common "property, becomes the act even of all." The same verse of Mureechi is recorded in the Mit. Book third, leaf 6th, page 2nd, line 5th, and at the end of the 1st page of the 4th leaf of the first Book,—it is written—"When there are many brothers divided in their Wealth, "the Supinda Kurun above described together with the Pretu Shradhdh" (the twelve days' ceremonies inclusive) "is still perfected to all intents when celebrated only by one "of them, and must not be performed by each—for it appears from the Smriti that the nine "Shradhdhs, as well as the supinda and also the sixteen other Shradhdhs, must be performed "by one of them alone, even if the estate be divided among them." That by "*one of them* "*alone*" is meant the Eldest, is clear from many other passages in the Nirnuye Sindhoo.

Sudur Udalut. Sir E. Nepean, *President*, G. Brown, J. Elphinston, Decree 27th May 1814.

lower Court, and the Sudur Udalut, after ascertaining that Respondent had actually expended the sum of Rupees 3,500 upon the Funeral Rites performed by him, and that their Pundit fully concurred in opinion on this case with those of the Provincial Court, affirmed the decisions against Appellants, dismissing their Appeal with Costs.

N°. 32.

SHUMBHOO DHUNESHWUR, Brahmun,..APPELLANT,

VERSUS

GOOMAN BHARTEE, ASSA BHARTEE, GOSAEEN,..... } *RESPONDENT.*

Surat Udalut. S. Bourchier, *Judge.*

Claim by a Brahmun to a right of sitting and receiving alms within a Temple of Mahadeo, in which he was opposed by the Gosaeen in charge.

Suit dismissed in the Zilla and Provincial Courts because heard and determined by a former Judge in Respondent's favor under a Decision of the Peshwa.

Sudur Udalut held that the Peshwa's decision not embracing the point at issue that of sitting within the Temple, the claim was admissible, and upon proof by Appellant that his ancestors enjoyed the privilege, confirmed it to him after consulting their Shastres.

THIS suit was instituted on the 15th November 1811 as an action for damages, Rupees 1152, by Appellant, to prove his right to receive certain voluntary Religious offerings to be made to him whilst sitting near the Juladharee within the Temple of Kantareshwur (Muhadeo) situated in Kutargaon, just without the walls of Surat, which offerings had been received by his Family during seven Generations, but were now taken by Respondent. He named several exhibits he had in proof of his Title, but it appearing from Respondent's answer, that himself had obtained a Decree in the very same matter against Appellant in the Judge's Court, the Records were searched, and it was found, that the late Judge, Mr. Crow, gave a decision in this matter on the 1st November 1806, by confirming an Order formerly

issued

issued by the Peshwa in favor of Respondent, then Plaintiff. The present suit was therefore dismissed, under Section 15th Regulation 1st of A. D. 1800 as having been previously heard and determined by competent authority.

Suit dismissed 25th May 1812.

The Court of Appeal conceived that the Appellant's motive for re-agitating this cause notwithstanding the former decision passed upon it, was to recover the opportunity, formerly lost, of bringing it before the Court of Appeal, and eventually before the Sudur Udalut, but the Court felt itself bound, since the provisions of the Regulation quoted by the lower Court were equally applicable to the Provincial Court, to dismiss the Appeal, and affirm the decision of the Judge, which was done accordingly.

Court of Appeal, N. Crow, *Chief Judge.* T. Day, *3d. do.*

Decree 14th August 1812.

The Sudur Udalut, in order to satisfy itself that this cause was in every point similar to that formerly heard and determined in the Zilla Court, called for the original proceedings of the first suit, and pending their arrival proposed the following Question to its Pundit, after handing to him the Peshwa's decision which Appellant had exhibited, and which was drawn up under 10 articles, or Heads, each being a decision upon one of 10 claims brought by Respondent against Appellant. Thus,

Sudur Udalut, Sir E. Nepean, *President.* G. Brown, J. Elphinston, A. Bell.

The first, declared a document adduced by Appellant to be a forgery.

The second, declared Respondent alone entitled to the produce of the Pagoda, its endowments, &c. and Appellant in no way authorized to claim them.

The third, enumerated 13 Heads of Huks and privileges decided to belong to Respondent alone. These were, to officiate in, 1st the Shravun Pooja; 2d the Chabree Pooja or flower offerings; 3rd before persons coming to pray after bathing in the Tappee; 4th The right to the milk offered in the Juladharee, 5th to the Kumuls full of Ghee; 6th to officiate

ciate at the monthly Pooja performed by Merchants &c. 7th to walk in procession round the God with the offerings; 8th to appropriate to his own use all offerings, whether of Gold, silver, Jewels, Cloth, Household Utensils, Horses, Cows, Bullocks, &c. made to the God; 9th To the offerings of Grain, Fruits, flowers, &c. 10th the Pooja or worship of the standard; 11th to all provisions given by Merchants &c. 12th To all sweetmeat and Herb offerings made to the God; 13th To all money and grain, the Huks of the God. The decision on this Head provided that the Gosaeen should take all these, and the Brahmun should take whatever money might be given him in charity, but none of the offerings placed before the God.

The Fourth, related to a Dhurmsala and trees destroyed by the Brahmun.

The Fifth, In this Respondent prayed the Appellant might be prevented from placing his Grain Bags in the Pagoda, and from receiving his alms inside the Temple. The decision declared that Appellant should not take the offerings placed before the God, nor upon the Juladharee, but might receive all voluntary offerings, whether money or Grain, made to him by any Merchants, or other persons coming to their devotions.

Sixth, related to the Pooja of Gunesu, Mata (Parvutee) Hunooman, and Nundu Keshwur, in the same temple, to which Appellant was to have no right unless he could produce a Paper from Respondent's ancestors ceding it to him.

Seventh, declared Respondent at liberty to employ any Brahmun he chose to make meat offerings to the God, and not bound to employ Appellant.

Eighth and Ninth, Related to the restoration by Appellant of the Profits he had unjustly possessed himself of.

Tenth, Again expressly warned Appellant not to interfere

with

with the Sheo Nirmalyu, or "God's offerings," under pain of God's displeasure, and expulsion from Cast.

The Court asked, can the Gosaeen in charge of a Temple of Muhadeo prevent a Brahmun from sitting within it, if used to do so, and from receiving at the hands of the Devotees such voluntary Gifts as they may offer him after they have put into the Juladharee those to be made to the God Sivu himself? This supposing the Brahmun and his ancestors have sat inside and received them formerly. State on this point the customs of Hindoos, and Law of the Shastr, and explain to the Court how the decision of the Peshwa, now before the Court on this point, affects the Appellant's claim and Respondent's denial of it.

The answer was as follows. If the Brahmun has been in the habit of sitting in the Temple to receive Gifts from the Devotees, though this act attaches to him some degree of Sin (1) yet it is not in the power of the Gosaeen to stop the custom, if derived to the Brahmun from his ancestors before him. (2) In some Temples a Practice obtains for Brahmuns to sit inside and receive alms; in others it does not. This is Custom. The Shastr is as I have above stated. The Deed given by the Peshwa does not clearly state, that the Brahmun is to sit in the Temple, nor does it say that the Gosaeen is at liberty to prevent him from doing so.

The

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(1) In the third Section of the Nirnuye Sindhoo, "For breaking the commands of a "religious preceptor, or of Sivu, or of his attendant Chund, a Lak of Muntrus must be "repeated. For eating their property, a Lak less one fourth are prescribed. After eating "their Nirmalyu, purity is declared to be regained by a Lak and a quarter. The punish-"ment of Gift received is equal to that of eating up" (the offerings), "and the half of "it is prescribed for refusal of a proper Gift." Munoo, ch. 10th *v.* 97. "His own Of-"fice, though defectively performed is preferable to that of another, though performed "completely; for he who without necessity discharges the duties of another class, imme-"diately forfeits his own."

A similar passage is found in the Bhugvutu Geetu.

(2) Garoodu Pooranu "The (punishment for the) sin of killing a thousand Cows at the commencement of the Mukuru," (or entrance of the Sun into Capricornus) "is denounced for cutting off a livelihood or inherited profession, but the reward of the Gift of a Lak of Cows, is promised for affording a livelihood."

Surat Udalut. No. 4648, 1805. The Court now recorded the original suit received from Surat. It was filed there on the 16th August 1805 by the Gosaeen (Respondent) against the Brahmun, (Appellant) for Rupees 1183, damages for interrupting him in possession of the offerings at the Kantareshwur Pagoda. The Brahmun then urged, as now, that his family had for 7 generations received the voluntary offerings of Devotees, allowing that those placed by them before the Symbol of Muhadeo belonged to the Gosaeen, who in his defence presented, 1st a decision on this case by Umroot Rao Rughoonath, Peshwa (the paper above recorded); 2d. an order upon the Soobu to enforce this decision; 3rd an order from the Gaeekowar; and 4th one from the Nuwab of Surat, confirming the right to the Pagoda Nirmalyu to Respondent. The Judge considered these documents quite distinct and satisfactory in favor of the Gosaeen's right, and affixing the Udalut seal to the decision of Umroot Rao in confirmation of it, awarded to the Gosaeen Rupees 50 of the sum sued for, as damages for the Brahmun's infringment of its conditions, with Rupees 50 more, as Costs to be borne by him.

Zilla Decree, 1st Nov. 1806.

The Sudur Udalut was of opinion that the point brought forward in the present suit did not appear to have been determined in the first cause, and the reason adduced for dismissing the suit in the lower Court was insufficient. The Provincial Court was therefore directed to allow Appellant to bring evidence of his ancestors having enjoyed the privilege claimed by him, Respondent being also permitted to refute it by other, since there was no proof before the Court of the right sued for being customary, so as to authorize a supersession of the written Law as stated by the Pundit.

Appellant, in pursuance of this permission adduced the evidence of thirteen persons, which proved to the satisfaction of the Sudur Udalut, that Appellant's ancestors from time immemorial sat in the middle of the said Temple near the Juladharee, performed the prayers, and took any offerings that might

be

be made to them, all Gifts thrown into the Juladharee being taken and reserved always by the ancestors of Gooman Bhartee, Respondent.

The Sudur Udalut decided that as the Peshwa's decision had not included the Point now at issue, whether Appellant might receive the alms inside the Temple, or not, whilst Appellant had proved the custom to have descended from his Ancestors, and the Law in that case admitted of its continuance, as shewn by the Vyuvustha of their officer, the Decrees of the lower Courts should be reversed, and it was decreed that Appellant be allowed to enjoy the Privilege of sitting within the Temple of Kantareshwur and of receiving alms therein, agreeably to the ancient Custom.

Decree 1st July 1814.

N°. 33.

BRIJLAL KHOOSHAL,.....,.....APPELLANT,

VERSUS

JEEVUNDAS JEEVRAJ,.....RESPONDENT.

THIS Suit was filed in the Broach Court on the 12th April 1813 for Rupees 1,351, due on a mortgage. Appellant, then Plaintiff, said that Huree Bhaee Narayundas, a Dussa Lar Bunyun, mortgaged to him, in security for a debt of Rupees 2,701, two Houses at Surat, and two at Broach, (one near that of Lulloo Bhaee, and the other near the Bohura Khirkee) the mortgage Bond of which was duly registered in the Surat Registry Office, and attested by the Mooftee of that City. Respondent having filed a suit in the Broach Udalut for Rupees 2,283-1, against Huree Bhaee, who as well as Appellant lived at Surat, judgment was given "ex-parte" for Respondent against Huree Bhaee, and Respondent had caused attachment to issue in

Broach Udalut. J. Romer, *Judge.*

Suit to stop the Sale by Respondent in execution of a Decree, of two Houses at Broach Mortgaged to Plaintiff (now Appellant) in a Bond passed to him for these two and two others at Surat, in which last Court the Bond was registered.

Zilla and Provincial Courts held that a Mortgage Bond to be valid and

recoverable, must be registered at the place where the property is situated, and threw out Appellant's claim.

Sudur Udalut however decided that non Registry annuls a Mortgage Bond, only when a Registered Mortgage Bond is set up against it, or an unregistered one of a prior date, and that when such are not produced, judgment may be given on an unregistered Bond, wherefore the Decrees were reversed in favor of Appellant.

in execution against the two Houses mortgaged to Appellant, who therefore found himself obliged to appear and prosecute to have the attachment removed, or half the sum due to him under the mortgage by Huree Bhaee, repaid.

Respondent answered that he had with Huree Bhaee a running account, the balance being adjusted annually, and for that of A. S. 1863 or A. D. 1807; brought forward under Huree Bhaee's own hand to A. S. 1866, or A. D. 1810 the Houses in dispute were then made over by the latter to Respondent, who had held them ever since, receiving the Rents and making Repairs to the Amount of Rupees 200. About two months ago, Huree Bhaee's Goomashta came with two Parsees to Broach for the purpose of mortgaging one of the Houses, and actually did make one over to Munchur Wittuldas. They were proceeding to mortgage the other also, when Respondent found out what was going on, and filed a suit against Huree Bhaee for recovery of his just demands. The Goomashta thereupon gave up his object and returned to Surat. Respondent allowed that the suit was decided "exparte," but not until the usual notice had been affixed to Huree Bhaee's House. As to Appellant's claim under mortgage, he according to information received from his Father at Surat, ventured to declare that the Bond, though purporting to have been executed two years before, was only registered at Surat, one month ago. He pleaded, that Mortgages should be registered at the place where the property was situated, and consequently that Registry at Surat of a Mortgage upon Property situated at Broach was not legal, and the Bond in question not having been registered at Broach, was precisely in that predicament.

The Mortgage Bond, exhibited by Appellant, was dated 1st Rubee ool Uvvul A. H. 1226, or 26th March, 1811, and registered on the 3rd April in the Surat Udalut. He likewise handed up a Lease, executed by Hureedas to him, on the same date, for all the four houses, agreeing to pay him Rupees 20-1

per

per month for occupation of them, either by himself or re-letting them to others.

The Court held that the Registry in the Udalut of Surat, of a Deed of mortgage relating to property at Broach, was not sufficient to render the Document, in respect to Registry, valid in the Broach Udalut, because the Registry at Surat of Deeds appertaining to Broach, afforded neither the necessary nor prescribed means of Information to the inhabitants of the latter place. A person might even, under such circumstances transfer property not belonging to him. Registry in the Udalut at Broach, of letters and Deeds appertaining to Broach was indispensibly necessary, that thereby the requisite general publicity, on the spot, of such transfers of property might be ensured. In the case at issue, how were the inhabitants of Broach to know, that Huree Bhace Narayundas, who had then gone to reside at Surat, had there transferred his Broach property to some person, merely by the Registry of the Deed in the Surat Udalut? It was decreed that Appellant had not made good his claim to remove the attachment, which was to remain in full force and execution of the former Decree to proceed, he bearing Costs of Suit.

Decree 27th May 1813.

The Judges observed, that the present case would not admit of a question, for by Section 14th of Regulation 1 of 1800, " the Judge was prohibited from decreeing the payment " or satisfaction of any sum due on a Mortgage Bond entered " into after the 1st July 1800, unless such mortgage Bond " should have been registered in his Court at the time of pass- " ing it." And by Section 7th Regulation 4th of 1802, it was prescribed " that all Deeds shall be registered in the Re- " gister Office of the Civil Court under the Jurisdiction of " which the property affected by them may be situated." It consequently followed " that if property be situated in " more than one jurisdiction, the Deed affecting it should be " registered in the Office of each Jurisdiction;" and these were the

Court of Appeal,
N. Crow, *Chief Judge*,
J. Smith, *2d do.*
T. Day, *3d do.*

the concluding words of Bengal Regulation 34th Section 7th of 1793, from which the Bombay Regulation was copied, but as Surat was the only Zilla Court established at that time in Goojurat, the concluding words were not inserted. Appellant had completely evaded giving the transaction the publicity it would have had, if registered at Broach, by taking but one deed of Mortgage for property situated both at Surat and Broach, and getting it registered in the former Zillah only.

Decree 20th July 1813.

His appeal was on these grounds dismissed with Costs, as recovered in the Zilla Court, and further Costs in Appeal.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, A. Bell.

In prosecuting his case before the Sudur Udalut, Appellant produced a letter from Respondent's brother Bhugwandas Bhookundas at Broach to Huree Bhaee at Surat who was his partner, in which he desired the latter distinctly to mortgage there the two Broach houses, and to send him the Cash to keep up their Credit; likewise one from Respondent at Broach to Duyaram Laldas and Bhaee Shah, his Son and partners at Surat, announcing a Bill of exchange he had drawn on Huree Bhaee for Rupees 1,025, which they were to attend to. "Huree Bhaee," the writer said, "had written him to raise money by "mortgage of the houses there and to send it to him, but "as no one would take them, he begged they would get it done "at Surat." A third letter from Respondent to one Huree Bhaee Wunarseedas, in which he mentioned having sent him a letter for Huree Bhaee Narayundas, to whom he was carefully to deliver it.

Respondent flatly denied these letters, and declared they were all forgeries, as the very addresses would prove, and asked how Appellant had come by them, and why they had never been shewn before, in either of the lower Courts.

The Sudur Udalut called up Huree Bhaee Narayun, who swore that he never made over the Houses in any way to Respondent, who was his partner, but duly mortgaged them to Appellant; acknowledged the above letter from Respondent's Brother,

Brother, and said he mortgaged the houses to Appellant and from him got the money to pay a debt due to the House of Duyaram Laldas, in whose house Appellant was a partner, and the business of which was carried on by Bhaeedas. Witness received Rupees 1,000 in Cash, and transferred the Balance of the Sale to his own credit in their Books.

Mr. Macklin, Reporter, stated his opinion, that the Registration of the Broach property at Surat was not fatal to Appellant's claim, and the Decrees of the lower Courts might be reversed by clause 2d Section 6th Regulation 4th of 1802, which declared " that every Deed of Mortgage of the description of that " specified in clause third Section third" (Deeds of mortgage on Land, Houses and other real property, as well as certificates of the discharge of such encumbrances) " that shall have been, " or shall be registered in pursuance of the requisition in Section " 14th Regulation 1st of 1800" (above quoted) "and provided " it's authenticity be established to the satisfaction of the Court, " shall be satisfied in preference to any other mortgage on the same " property, executed subsequent to the same date, which may " not have been registered, and whether such second, or other, " mortgage shall have been executed prior or subsequent to " the registered mortgage. "

The Court observed, that no mortgage was set up against Appellant's claim. If a mortgage Bond duly registered in the Broach Court, within whose Jurisdiction the mortgaged property was situated, had been produced, it would unquestionably have been fatal to the admission of the present claim, and if an unregistered Mortgage Bond of a prior date to this one, had been advanced in opposition to it, the Court, on sufficient proof of the authenticity of such prior mortgage, would have given judgment in favor of the prior Deed, though not duly registered. In the present case, the Registry of the Bond took place in a Court different from that in whose Jurisdiction the Mortgaged Property was situated, and therefore by Section 7th Regulation 4th

of

of 1802 the Registry was invalid. But as by the provision of Clause 2d Section 6th of the same Regulation, (above quoted), the Court was bound to give a preference to a registered mortgage above one which had not been registered, it was clear that when no registered mortgage is set up, judgment may be given in favor of a mortgage without Registry, provided its authenticity in other respects can be satisfactorily established.

Decree 28th Nov. 1815.

The Decree passed in pursuance of the opinion was that the two Houses at Broach in possession of Respondent, and claimed by Appellant under a mortgage Bond registered at Surat, be sold by Auction; that from the Proceeds Appellant be first paid his mortgage with interest, and Remander if any, be paid to Respondent to the amount of his claim, each party bearing their own Costs.

N°. 34.

KHOOSHAL and BIIAEECHUND, Sons of Bhookun, ... and KRISHNEE, Woman..... APPELLANTS,

VERSUS

BHUGWAN MOTEE,..... RESPONDENT.

Surat Udalut. S. Bourchier, *Judge.*

Suit for enforcing celebration of a marriage contracted between Respondent, and Appellant Krishnee, which the other Appellants, Uncles of Krishnee, wished to set aside.

Referred by the Zilla Judge to the Cast, and the Majority being in favor of cele-

THIS suit was filed by Respondent on the 24th September 1811, to recover from Appellants damages for loss of Character in the Cast of Dusa Nagur Ahmudabadkur Bunyuns, by their breaking off a marriage contracted between him and Appellant Krishnee. Respondent said that on the 4th Vyshak Vud A. S. 1866, or 23d April 1810, Sheo, the Widow of Krishnram, betrothed her daughter Krishnee to him, and he settled with her to pay Rupees 350 for the Pulla Jewels and Rupees 25 for clothes. He gave her at the time before witnesses an Armlet worth Rupees 25, and sent to Sheo by a Woman called

ed Bhujee, Silver Feet ornaments worth Rupees 100 and Gold necklaces worth Rupees 125 being Rupees 250 out of the Pulla. Her Brother Jugjeewun was a witness to this. Sheo then went to Chooneelal, Head of the Cast and informed him of the contract, and of her having received the Jewels as Pulla. Sheo also told him that she had obtained consent of Appellant her Husband's Brother. Sheo shortly after died, and since then Appellants, the uncles of Appellant Krishnee, were endeavoring to break off the Mungnee, and marry their Niece to Motee, Son of Appellant Khooshal's Brother-in-law Joitah. Respondent contended that the Mungnee could not be thus set aside, and prayed to have Krishnee's marriage with him duly solemnized and Appellants made to pay the damages.

brating the marriage, a Decree was given in Respondent's favor, and affirmed by the Courts of Appeal and Sudur Udalut. Execution avoided by Krishnee marrying another person.

Appellants said in answer, that they knew nothing of the Mungnee, nor of receipt of the Pulla Jewels. The Custom in their Cast was that the Mungnee should take place before the Nyat Gour, but the Betrothal of Krishnee was not so performed. Bhujee, the woman named by Respondent, was intimate with their Sister-in-law, but Respondent, having given the Jewels to Sheo through her, did not constitute a valid Mungnee. Lala Chooneelal had taken the Jewels from her, and deposited them with another, and a meeting of the Cast summoned at his house had declared the Mungnee not performed agreeably to the Rules of the Cast. Respondent was once expelled for having broken off another Mungnee at Padra, and was fined Rupees 117 besides for the benefit of the Balkrishna Pagoda. His relations were inclined to resist the present measure, but Respondent having admitted by his silence before the Cast, when proof of this contract was publicly called for, that it did not exist, they gave up the point, and Chooneelal gave them, Appellants, permission to betroth Krishnee to whomsoever they pleased, and they had fixed upon Moteeram who settled the amount of the Pulla, and passed a written contract, as was Customary in the Cast, and this having now subsisted

six

six months without Respondent interfering, he could not hope to set it aside now.

The parties at the instance of the Court mutually agreed to refer the adjustment of their dispute to Lala Chooneelal and the whole Cast, binding themselves to abide by their award.

Seventy nine Numbers voted in favor of Respondent, and forty one, in favor of Appellants; the Umpire, Lala Chooneelal, also gave his Voice in Respondent's behalf, but declined to sign the paper on either side.

Decree 4th March 1813.

The Judge finding that the majority of the Cast with the Seth at their Head, was in favor of Respondent and of confirming the Betrothal of Appellant Krishnee with him, passed a decree, declaring the contract good and valid, and demanded Security of Appellants in Rupees 1,000 each, that they would not marry Krishnee, who was then under their Guardianship, to any other person.

Court of Appeal, N. Crow, *Chief Judge.* J. Smith. *2d. do.*

The Provincial Court, to whom Appellants appealed, was induced by them to call the members of the Cast up and take their Votes, whether by their Usages, the Mungnee or Betrothal of Respondent with Krishnee were valid or not.

Forty Six voted in favor of, and Seventeen, against the validity, five others refusing to vote either pro. or con.

The Majority of the Cast being evidently inclined to support Respondent's right to the Girl Krishnee, the Court of Appeal had no hesitation in confirming the Zilla Judge's Decree in his favor, which was done accordingly.

Decree 15th une 1813.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, J. Elphinston, Decree 24th Feb. 1815.

The Sudur Udalut concurring in the propriety of these decisions, affirmed them, Costs being borne by Appellants.

Subsequent Proceedings,

This decision was resisted by Appellant Krishnee positively refusing to marry Respondent and her Uncle's preferring the Sacrifice

fice of the Penalty entered into in the Zilla Court. The Sudur Udalut consulted its Law Officer, under date 19th May, how a Mungnee, pronounced valid by the Majority of a Cast, and confirmed by the Courts of Justice, but to which the Woman so betrothed refused to conform by denying consummation to the Husband, and attempting to marry with another, is to be enforced? He replied, "a mungnee so pronounced valid by the "Cast cannot be set aside, and the Woman on refusal to cele- "brate the marriage, should be compelled by the Cast in what- "ever manner they think proper to consummate it, and orders "should be given to the Cast for the purpose. For Bruhuspu- "tee ordains that the Sovereign shall cause all Religious Rites "to be observed as they have been of old, respecting country, "cast, and people" (1) Before this Vyuvustha was given, even the marriage of Krishnee with Motee Joitah was clandestinely celebrated by Appellants on the 29th April, and the Cast having been examined, declared this last marriage legal, so the Sudur Udalut left Respondent to seek redress if he chose, letting him find out the proper course of himself; he had already received the Damages sued for, Rupees 1183, and all Costs, and the amount of the Penalty Bonds Rupees 2,000, was carried as a Fine to account of Government.

N°. 35.

MIHIRWANJEE RUTTUNJEE, ... *Appellant*,

VERSUS

HIS BROTHERS POONJEEA BHAEE and DADA BHAEE, { *Sons of Ruttunjee Manukjee Pauk*, } *Respondents*.

THIS Suit was filed on the 11th August 1812 for the sum of Rupees 200,000, being Appellant's one third share of the Estate of Ruttunjee, late Father of the Parties.

Surat Udalut, S. Bourchier, *Judge*.

Appellant

(1). Vide Note (6) to Report No. 14.

Claim by a Parsee against his two Elder Brothers for a third Share of their common Father's Estate which was valued at Rupees 600,000.

Refused under a Will of the Father forbidding separation of the family, and cutting off Appellant with a House, Rs. 2000 in Cash, and a Share of the Household Utensils, in case he should lead a vicious life, and insist on separating.

Zilla and Provincial Courts threw out the claim for a Share, and the Sudur Udalut affirmed this decision, with an amendment in Appellants favor for the diminished portion allotted him in the will.

This portion being refused by Appellant, when tendered to him, was returned to to Respondents.

Appellant stated that the Father died about 4 years before, leaving Real and Personal property to the value of Six Laks of Rupees, of the whole of which Respondents had possessed themselves refusing to give him any, the least part, of it and disputing his Title to share with them at all.

Respondents made answer, that Appellant during their Father's life time led a most wicked and dissolute life, and squandered away large sums of money in debauchery. Their Father once paid off his debts to a very large amount, which was entered, as might be seen, in the Books, taking a writing from Appellant on the occasion to forsake his wild habits of life, under Penalty of being disinherited, and of losing all claim to a share of his Father's Property. He had notwithstanding continued his wicked Courses, which so provoked their Father, that in his Will he expressly disinherited Appellant, and in refusing to let him share Respondents only acted in obedience to their Father's commands.

Appellant in Reply asserted that the Will under which Respondents wished to set aside his claim was a Forgery, because his Father, who knew the world well, could not have made one so directly at variance with the Laws of every Sect, whether Hindoo, Moohummudan, or Parsee, and that it could not be considered valid, because unattested by the Mooftee, nor witnessed by Merchants of the city, nor registered in Court. He concluded that the deceased could not by Respondent's acknowledgment, have been in a sound state of mind when he wrote it, being at the time on his death bed.

Respondents rejoined that the Will was good and valid in every respect, as would be seen on inspection of it.

The Will was then exhibited, and Appellant denied the signature to be that of his Father. It ran as follows:—

In the name of the Omniscient Being, the Almighty Dispenser of benefits to mankind, the Fountain Head of Wisdom, by whose

whose permission this writing is written. Whosoever is born in this world most assuredly shall appear before the Throne of Truth. There is no reliance to be placed on the Life of man. He is momentarily subject to annihilation. Revolution succeeds revolution, nothing on earth is permanent. Therefore I, whilst in the enjoyment of my faculties have made this my last Will and Testament, that in the event of my death, my three Sons, Poonjeea Bhaee, Dada Bhaee, and Mihirwanjee, may see my wishes carried into effect, conformable to this my Will, which having attentively considered, let their consent be unanimous.

This is the Will of Paruk Ruttunjee Manukjee, written on Friday 1st Kartik Vud A. S. 1865 (or 4th November 1808) my possessions, Gardens, Lands, and Houses, Chattels, and Household Furniture, whatsoever the Almighty has bestowed upon me, and what I have obtained by my own labor, is to devolve equally to my three Sons, under the provisions following, to which let them manifest their obedience, under pain of being regarded by me as Criminals in the day of Judgment.

Clause 1*st.* My son Mihirwanjee is an exceeding dissolute character. He will not attend to my advice. He has spent sums of money on vicious pursuits and given himself up to dissolute habits. The money I have advanced him I have put down to his account. Great is the uneasiness I suffer on his account. From henceforth let my sons Poonjeea Bhaee and Dada Bhaee, having a careful regard to the good character I acquired, carry on the business at the Warehouse; for which purpose I direct, that the management of my property be committed to them. Should Mihirwanjee attend to his Brothers' admonition, abjure his vicious habits, no longer disgrace my name, and conduct himself as his two brothers do, then my property is to be equally divided between them, neither shall one Brother's share exceed that of another; but if he will not attend to their advice, nor forsake his evil propensities, and should wish to have his share of my property separate, then the House purchased from

Hajee

Hajee Hoossain, Rupees 2,000 in Cash, and a proportion of the Cooking Utensils being given to him, he must separate himself from my House and Family, and has no further claim whatsoever to any property of mine.

Clauses 2d and 3d. In these the Testator provided that his Wife Umma Baee "the mother of his Children" should retain the valuable Jewels and Wearing Apparel then in her possession till her death, when they were to be divided equally between his daughters Koonwur Baee and Sona Baee, to each of whom a House was to be given, they still residing, as well as every member of the Family, in union and harmony, in the Family mansion, and all Expenses, of the household and of Marriages, Funerals, &c. being defrayed by Respondents.

Clause 4th. On the decease of the Testator's Sister Motee Baee, the house bought of Seedee Ryan was to be sold, and the proceeds of it, and of any property left by Motee Baee, to be expended on her Funeral.

Clause 5th. The Testator, after declaring that he had during life expended in pious donations and on account of Religion whatever it was requisite for him to bestow, and paid all his debts, authorized Respondents to expend on the usual Ceremonies at his Funeral certain sums, verbally enjoined them to lay out; and.

Clause 6th. Whatever was proper and respectable on the death, thereafter, of his wife Umma Baee.

Clause 7th. " Prior to this I made out a Will in my own " Hand writing. I do hereby cancel and annul the said " Will."

In this my Will seven distinct parts are comprised, and this my Will is finished. My Sons Poonjeea Bhaee and Dada Bhaee, remembering the reputation and character I acquired, will carry on the business at the Warehouse. The confidence I repose

pose in these my two Sons has induced me to leave the management, and full power in the transactions and concerns, of the Warehouse, as well as the family expences to their discretion. On a marriage in the family the expense is to be defrayed by the whole. Should you three Brothers agree and live in harmony with each other, according to my wishes and the reputation of the family, my happiness will be completed, and you will be rewarded on the day of Judgment. I commit the whole of my family to the protection of my Brother's Son Ardasheer Dada Bhaee, who resides at Bombay. I implore the Almighty to preserve the reputation of myself and children. I beg Ardasheer Dada Bhaee to extend his protection of my family. I have voluntarily, whilst in possession of my faculties, written this my Will.

(Signed) PARUK RUTTUNJEE MANUKJEE.

Witnesses,

KHOORSHEDJEE DOSA BHAEE, MODEE.
MIHIRWANJEE BAHMUNJEE.

The witnesses proved that this Will was duly executed by the Testator, being then of sound mind, about two months before his death, in presence of Appellant, Respondents, and many other persons of his own Family. One of them said he had then, at time of attesting the Will endeavored to make the deceased give up his intention of disinheriting Appellant, but Ruttunjee persisted in his purpose of executing the Will as he had got it drawn up, and did execute it as it then stood.

Respondents then presented the agreement which Appellant formerly executed to their Father. By this Paper Appellant acknowledged with humility his Father's kindness in paying off his debts and his own unworthy conduct; bound himself from that time to renounce his wickedness and live a sober and virtuous life, and declared himself liable, in case of his again breaking out into vice, to be disinherited of his share of his Father's property,

property, noting at the same time, that if he behaved well, this writing should be held to be null and void.

Appellant admitted this document to have been passed by him, but pleaded that by the Will he was entitled to one third of the property.

The Judge determined that the Will was a Legal Instrument, from the purport of which the Testator did not intend that his property should be divided. But in case the younger Son, Appellant, wished to live separate, a particular arrangement was to have effect, as laid down in the first Clause. It was thereupon decreed, that Appellant had no claim or Title to the third part of his Father's Estate, but only, in the event of his choosing to separate, to the Provision allowed him by the first Clause of the Will, and the present claim was dismissed with Costs.

Suit dismissed 8th April 1813.

Court of Appeal. N. Crow, *Chief Judge*. J. Smith, *2d Do.*

Mihirwanjee on Appealing to the Provincial Court still declared the Document produced by Respondents a Forgery, and exhibited another Draft in his Father's hand writing, dated Thursday 6th Jesht Vud 1860, or A. D. 1804, near four years previous to the Will. The Legacies and assignments were the same as those in the Will with one or two others, and no mention was made of any person, whether Appellant or his Brother, as the Heirs. Appellant was then called on for his proofs of the Will being a Forgery, but he stated his inability to bring any.

The Court held, that it was perfectly reasonable in the Testator, Ruttunjee, to take such precautions that Appellant might not make away with any large share of the property he left, which his former conduct shewed to be probable he would do. His being cut off with so small a Portion was the natural and proper consequence of his own misconduct, and this being their opinion, the Decree of the Zilla Court pronouncing the Will valid, and Appellant not entitled to claim a third share, was affirmed.

Decree 17th July 1813.

On

On the case coming before the Sudur Udalut, that Court concurred in the above Decrees, but adjudged Appellant entitled to the portion allotted to him on his having demanded separation by the first Clause of the Will, and a Precept was issued to the Provincial Court to see the House particularized in it, with the sum of Rupees 2,000 and the share of cooking Pots delivered up to him.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, J. Elphinston, A. Bell. Decree 19th May 1815.

The return to the Precept certified that Appellant refused to take the House and effects so adjudged, and which were restored to Respondents on his refusal to receive them.

N°. 36.

BAHMUNJEE MUNCHURJEE,.....APPELLANT,

VERSUS

MUKIA KHATOON, Daughter and Heiress of SALA CHILLABEE, deceased,..... RESPONDENT.

THIS cause was filed on the 24th August 1804, by Appellant, to recover from Respondent the sum of Rupees 28,711-3-05 due on a Bond.

Surat Udalut. S. Bourchier, *Judge.*

The Appellant said that his Father, Munchurjee Khoorshedjee, had large demands against Sala and Ibrahim Chillubee, on Bond and account Current, which were adjusted on the 19th March 1789, A. D. by Sala Chillubee passing to his Father a fresh Bond for Rupees 42,001, being only half the amount of the debt, in consequence of Khoorshedjee allowing him 50 per Cent discount. Various sums were paid off by Sala Chillubee up to the time of his death, in A. D. 1794, but Appellant said he had received nothing since, though frequent application was made to Respondent, the daughter and Heiress, for payment of the balance now sued for. She had constantly put him off with excuses of

Appeal preferred to set aside an award of the Nuwab of Surat on a claim of Appellant against Respondent the Mother-in-law of the Nuwab's son, referred to his Highness by the Udalut under the Treaty of A. D. 1800 (and *Section 16th* of Regulation 1st of 1800) by the Supreme Government's construction of which Respondent was held to be a

Relation. Appellant pleaded that his suit having been filed after the Mungnee, but before the Marriage, Relationship did not at the time exist, and the Award was not binding, Sudur Udalut determined that Rishtudaree, or the Relationship contemplated by the Regulation, did commence on the date of the Mungnee, and threw out the claim of Appellant for a fresh decision by our Court.

of poverty, but he declared that since her Father's death she had paid Rupees 150,000 to Neeamun Chillubee, Nephew of the deceased, as his share of the proprety left, besides which she had appropriated 140,712-2, Rupees to her own share. The deceased left property to the amount of Rupees 576,425, exclusive of outstanding debts, yet Respondent would pay none of it to her Father's Creditors whose claims amounted to Rupees 295,000, against the Estate.

The Chief, Mr. Crow, made a communication to Government on the 4th March 1805, respecting a conversation with his Highness the Nuwab, who, having married his Sons to two Girls of the Family of the late Sala Chillubee, one his Granddaughter, the other a daughter of his Cousin, considered that Family as coming within the description which the Treaty of Surat of A. D. 1800 provided for, and upon the Judge, Mr. Crow, issuing a Summons against the Daughter of the deceased, (Respondent) at the suit of a Parsee (Appellant) who had filed a Petition to a large amount against the Estate, he sent to remind the Chief that she was one of his Relations, and any complaint against her was therefore referrible to him.—When the Chief pressed his Highness to apprize him of the line of Conduct he should think it incumbent on him to pursue in regard to Sala Chillubee's Estate, as there were demands instituted against it a long time ago in the Udalut, which for want of property or any visible means of recoverance, had been suffered to lie over, the Nuwab candidly told him, that such suits as might be entered against the Estate subsequent to his Children marrying into the Family, he should expect to be handed to him; such as were on the File of the Udalut at the time, he submitted to the decision thereof. Mr. Crow concluded by saying, that he should proceed upon this Arrangement, if Government deemed it just, in all affairs of the Estate that might be brought before him.

The Judge subsequently referred this case for decision to his Excellency the Nuwab agreeably to the Treaty of 1800, because

cause Respondent's daughter having been betrothed to the Nuwab's Son in 1803, the Family of Sala Chillubee must be considered connexions of his Excellency. Several other suits pending against the same Estate on the File, were referred to the Nuwab at the same time.

On the 27th February 1807, Government referred the question of Jurisdiction reported to them in the Chief's letter, of which copy also was forwarded, for the decision of the Supreme Government, in consequence of Appellant's frequent complaints that he could get no decision passed upon his claim by the Nuwab.

The Supreme Government in answer, dated 26th March 1807, stated their opinion "that the operation of the Treaty was not "affected by the period of time at which those Marriages took "place relatively to the date of the Treaty, that is to say, that "persons who, subsequently to the date of the Treaty, be-"came Relations of the Nuwab, were to be included in that "article of it which provides for their exemption from the Juris-"diction of the established Courts of Justice, equally with those "who existed in the condition of his Excellency's Relations at "the conclusion of the Treaty.

"The question therefore was reduced to this, whether, suppo-"sing the marriages of the Nuwab's Sons to have taken place "before the conclusion of the Treaty, the Mothers of their "Wives would have been considered to come under the de-"scription of the Nuwab's Relations. Upon this question, the "Supreme Government was of opinion, that they would have "been considered in that light, and consequently that the dis-"tinction drawn by the Nuwab, between those causes affecting "the Estate of the late Sala Chillubee which ought, and those "which ought not, to be cognizable in the Civil Court of Judi-"cature at Surat, was conformable to the principle prescribed "in the Treaty."

On a fresh reference the Supreme Government further declared,

clared, in a letter dated 29th April 1809, " that the case stated in " the former letter, of the construction of which the Bombay " Government entertained doubts, and thought it susceptible " of an interpretation inconsistent with the preceding definition " of the Rights of the Nuwab under the Treaty, was intended " to illustrate that definition, by declaring the opinion of the " Supreme Government that persons rendered Relations of the " Nuwab by marriage subsequent to the conclusion of the Trea- " ty, were to be considered as coming within the Provisions of " the Treaty, in the same manner as if such had taken place " before the conclusion of it. The Supreme Government still " held this opinion,, and, also, that the Mothers of the Wives of the " Nuwab's Sons must be considered among the number of his " Relations. However they might lament the injury to the cause " of general justice which the operation of this exemption from " the process of British Law might eventually produce, the evil " must be tolerated, being irremediable without a departure from " the obligation of public faith."

The Nuwab's Son; who had married the Granddaughter of Sala Chillubee (Respondent's daughter) died in A. D. 1809, and Respondent, Mukia-Khatoon, of her own accord petitioned the Udalut, under date the 15th August 1811, to be allowed to return under protection of the Honorable Company, and to have the suits against the Estate which had been referred to the Durbar, recalled and decided in the Udalut.

These suits were accordingly recalled, and brought forward as they stood on the File. When the present cause came on in turn, and the Proceedings were gone through, it was found that the Nuwab had passed a Decision on this claim, on the 2d May, 1807, to this effect " that Appellant's claim having been " examined together with those of others against the same " Estate, the sum of Rupees 3,282-2-25. had been adjudged to " be due to Appellant, on the same terms by which the other " Creditors had compounded their claims, viz: for the Princi-

" pal

" pal only, and Respondent was thereby ordered to pay the " above amount when she could raise the sum from her Father's " debtors."

The Judge did not think himself authorized to question the validity of the award made in this matter by his Excellency the Nuwab, which, according to the interpretation of the Treaty of A. D. 1800 by the Supreme Government, was final and binding on the parties, and was accordingly confirmed in a Decree passed to that effect.

Decree 23d March 1812.

This Court concurred in opinion with the Zilla Judge, that they were not authorized to question the validity of the award of his Excellency the Nuwab, and therefore affirmed the Decree of the Zilla Judge, founded upon, and confirming, that award.

Court of Appeal,
N. Crow, *Chief Judge.*
G. L. Prendergast, 2d *do.*
Decree 28th Dec. 1813.

Appellant in his pleadings before the Sudur Udalut laid great stress upon the marriage of the Nuwab's Son not having been celebrated until A. D. 1808, and Respondent's consequently having held no relationship with the Nuwab until four years after he had filed his suit against her. He said there was no mention in the Treaty, of any Relationship the Nuwab might form at a future period, but merely of that subsisting when the Treaty was made, and as Respondent had since of her own accord, given up all claim to the name of a Relation, he prayed the suit might be fully investigated on its merits, as the Relationship now formed no Bar.

Sudur Udalut,
Sir E. Nepean, *President.*
G. Brown,
J. Elphinston.

The Court directed the Provincial Court to ascertain the date of the marriage of the daughter of Respondent with the Son of the Nuwab, as the Court was of opinion, that in the event of its not having been solemnized, or of the Mungnee alone having taken place, before the date of Appellant filing his Petition, or 24th August 1804, the fact of Respondent being at the time related to the Nuwab, would not be duly established.

The

The Provincial Court called upon the City Qazee of Surat, to prove by his Records the respective dates of the Mungnee and Marriage. From his evidence, the Mungnee was proved, and also admitted by the parties, then present in Court, to have taken place on the 25th Moohurrum A. H. 1218, or 16th May A. D. 1803, or more than a year before the filing of the suit, The Marriage was celebrated on the 26th Rubbeeoos Sanee A. H. 1223, or 21st June A. D. 1808, about four years subsequent to the filing of the Suit. In handing up this Return to the Precept, the Judges observed, that the opinion entertained at Surat was, that Relationship was considered to commence from the date of the Mungnee.

The Sudur Udalut demanded of the Mooftee, whether in the case of two families becoming connected by Marriage, the Relationship was to be considered to commence from the date of the Mungnee, or that of the celebration of the Marriage.

He answered, the Relationship is considered to commence from the date of the Mungnee, but if the Marriage should not take place between the parties in consequence of the death of one of them, the survivor will not inherit, unless the ceremony called Ijabee Kubool have taken place in celebrating the Mungnee. But all the rights of relationship, with the exception of that of inheritance, are in force from the time of the Mungnee between them.

The Sudur Udalut decreed, that as the Treaty with the Nuwab gave him exclusive Jurisdiction over all causes instituted against his Relatives or Servants, and as Respondent became a Relative of the Nuwab, by contracting her daughter in marriage to a Son of the Nuwab previous to the commencement of the present Action, which marriage was afterwards solemnized and consummated, and as Relationship was declared to commence under the Moohummudan Law from the time of the first Contract, the Court felt itself precluded by these circumstances from opening the Judgment, or award, of the Nuwab, on which the

the Decree of the Zilla Court was founded, and afterwards affirmed in appeal by the Provincial Court. The Appellant's claim was therefore dismissed, each party paying their own Costs. Decree 24th Feb. 1815.

The Appellant, not satisfied with this final decision, petitioned for a rehearing and revisal of it, exhibiting in support of his claim to such revisal the opinion of two of the City of Surat Mooftees, viz. Nizam-ood-deen, and Shekh Moohummud Jumal-ood-Deen, upon the following Question. "In a case "wherein the ceremony of Mungnee or Betrothal has taken "place according to Custom between a man and Woman, is "marriage established by such Mungnee, or not?" The opinion was this that, "a Mungnee with a View to marriage, as in this "case, is similar to shaking hands only, and equivalent to a "Promise of Marriage, whereby Nikkah or Relationship of "marriage is not established. For according to the Toosool "Amadee, "a Sale is settled by mutual giving and taking, ex-"cept in cases of marriage."

The Sudur Udalut again called upon its own Mooftee, to state, upon perusal of this Paper, whether he still considered all the rights of Relationship, except that of Inheritance, to be recognized by the Moohummudan Law between the Nuwab of Surat and Respondent in consequence of the Mungnee or Contract?

He answered, "The opinion formerly given was certainly "correct, and the Law quoted by the other Mooftee is not at all "applicable to this case, since the present dispute is not to "prove a Relationship of marriage, on which to found Heirship "of one of the Couple on the death of the other, nor to establish "a legal Marriage, but simply Relationship of two parties, "comprehending participation in rejoicing and mourning on "usual occasions, which Relationship creates an equality of "Rank, by virtue of the intention of marriage, and in conse-

"quence

" quence of such equality, every matter of honor and reproach " in the eye of the Law affects both parties."

Appellant then exhibited an opinion of the Mooftee of the Surat Court in a Suit between Moohummudans to compel celebration of marriage upon a Mungnee, in which the Mooftee had declared " a contract of marriage is merely a promise, and " until the marriage take place, the Woman is a Free Agent, " and without her consent the marriage cannot be performed, " and customs of the Cast (Sect?.) which are at variance with " the Rules of Law, are not be regarded." The Sudur Udalut then required their Mooftee to state more explicitly, whether by the Law, Respondent became what the Regulation called a Rishtudar, or Relation, of the Nuwab, by performance of the Mungnee between her daughter and the Nuwab's Son, and how the above opinion bore upon this case.

The Mooftee replied, the enclosed opinion is not applicable to the present question, for the object now is not to establish a marriage, or Nikkah, but a Relationship, or Rishtudaree, which Relationship commences upon the Mungnee taking place.

The Judges of the Sudur Udalut rejected the prayer of the Petitioner for a rehearing, and the decision was declared final.

N°. 37.

Mt. GOOLAB, Widow of ADEETRAM DWARKADAS..... } *Appellant,*

VERSUS

Mt. PHOOL, Widow of HUREE BHAEE DWARKADAS..... } *Respondent.*

Surat Udalut, T. M. Keate, *Judge.*

APPELLANT filed her Petition on the 3rd July 1812, to recover from Respondent, and her Son, then a minor, the

Beesa moth Bunyans,

Suit by Appellant, a Widow, to recover her late husband's property from the widow and son of her late husband's brother.

A Will of Appellant's husband in favor of his Nephew charged only with Appellant's maintenance, set up by Respondents.

Zilla Judge decided in favor of Appellant, being of opinion that the Brothers having separated, Appellant became under the Hindoo Law, Heiress of her husband notwithstanding any Will of his to the contrary.

Courts of Appeal and Sudur Udalut, each taking further evidence and consulting their Law Officers, agreed in declaring separation of the Brother's interests not proved by Appellant, and in throwing out her claim thus reversing the Zilla Decree.

the sum of Rupees 15,000, being the amount of property left by her late husband Adeetram Dwarkadas, (as per Inventory annexed) on his death at Basseen in A. S. 1861, or A. D. 1805, all which he was said to have acquired by his own industry. Appellant said this was seized on by Respondent, who had likewise stopped payment of the interest on the Remainder of her Pulla, Value Rupees 500, from the Merchant with whom it was deposited. But as by the Shastr no one was entitled to her husband's property but herself during her life, she prayed to have it delivered up to her accordingly.

Respondent denied Appellant's claim to be just, because Adeetram on his death bed, had devised by a Will, the Bombay shop, and all his effects, to her Son Govind Bhaee Huree Bhaee charged with Appellant's maintenance during her life. A quotation given from this Will, stating " that Appellant was to " retain her Pulla, in her possession and valued at Rupees 1,500, " and was to live in the house with Respondent, having food " and clothes allowed her, but if she preferred living separate, " Rupees 1,325 should be lodged with a respectable Shroff for " her, the interest being applied to her maintenance, and she " was to be furnished with Cooking Utensils to the weight of " two maunds, one hundred Rupees worth of clothes, and the " old house of the Family for her residence. This separate " maintenance not to have effect till she had attained the age " of 21 years, and the Residue of all her effects was to go at her " death to Respondent because she, Appellant, had no Chil- " dren." Appellant had resided peaceably and amicably with Respondent at Basseen for 4 years, but was lately instigated by her Father to prefer this suit, but as she was even then only 18 years of age, could not claim the benefit of the stipulation in the Will, nor leave the Guardianship of Respondent until she was 21 years of age.

Appellant declared this Will was a Forgery, because her husband before his death gave orders to send for her Father in order

der to put the property in his possession, and gave her a List of it, writing to her Father, only 8 days before his death, with his own hand that she should have the whole.

Respondent persisted that the Will was good and valid, and produced it in support of her right to retain Adeetram's property. From the tenor of it the Shop in Bombay appeared to have been involved in difficulties, and the Testator was on his way to wind up the concerns, and pay a certain sum, which had been agreed upon, to Govind Bhaee Huree Bhaee, but finding his end approach, made over to the latter by this Will dated Sunday 8th Shravun Vud 1861 or A. D. 1805, all his interest in the House and its management, all the outstanding debts, and all his property, with the exception of that contained in the above quoted stipulation for Appellant's maintenance. It was mentioned in conclusion that their respective shares in the Basseen and Poona Houses had been adjusted between the Testator and Govind Bhaee's Father Huree Bhaee, in A. S. 1853, (or 8 years before,) and the Testator also added " in case of " my recovery, this assignment is not binding upon me but is " null and void."

Appellant exhibited a Paper of the same date as the Will, being a List in Adeetram's name of ornaments and Clothes to the value of Rupees 13,002, which the person to whom it was addressed, but not named therein, was enjoined to make over to his Wife, Appellant, who said this List was written by Kuhandas, her Husband's Goomashta; he on being called up however positively denied the Paper, and said he was not Goomashta to the deceased, but to Huree Bhaee.

Appellant likewise exhibited two letters of Adeetram from Poona, declaring his intention of settling his property on Appellant; also a letter from Respondent to Appellant's Father just before Adeetram's death declaring that every thing would be settled on Appellant, Goolab.

The

The Judge, observing that each party denounced the documents of the other as Forgeries, and that the will, which alone was witnessed, could not be proved, as the witnesses lived out of the Jurisdiction, proposed a Question to the Pundits, whether a man, separated in interests from his Brother, could by will bequeath his property to that Brother's Son, when his own wife was alive? To which they answered "according to the Mi-"takshura, The wife of a man separated in interests from his "Brother has a right to inherit her Husband's Estate, and a "will made by the Husband during the life of his wife in favor "of his Brother's Son, is not valid." (1)

Now it was admitted on both sides, that the three Brothers, Adeetram, Huree Bhaee, and Lal Bhaee, had long lived separate. Therefore a Decree was passed under this Vyuvustha, annulling the will, and decreeing to Appellant recovery from Respondent of all her Husband's property.

Decree 19th March 1814.

Phool Baee grounded her Appeal for reversal of this judgment on the facts that the Brothers Adeetram and Huree Bhaee were in partnership, and that as no separation had taken place, she and her Son were legal Heirs to the property of both, even without the will.

Court of Appeal, N. Crow, *Chief Judge*. G. L. Prendergast, *2d. do.*

Appellant said the Brothers never were in partnership, and their Families and interests perfectly separate at the time of Adeetram's death. She subsequently in her pleadings gave up this point and admitted they were in partnership till A. S. 1853 or A. D. 1797, when a settlement of accounts and separation of interests took place. She had no Deed to shew, but referred to the passage in the Will where the shares in the Basseen and Poona Houses had been adjusted in A. S. 1853. She admitted also,

(1) This Vyuvustha, if the Brothers had really been separated was quite correct, by this saying of Bruhusputi in the Mit. Book second, leaf 55th, page 2d, line 10th, (in confirmation of the often quoted law of Yagnyuwulkyu) "Let the wife of a deceased man who "left no male issue take his share notwithstanding kinsmen, a father, a mother, or uterine "brethren be present." Cole. Mit, 327.

also, that on occasions of mourning or Rejoicing in the Cast, the Brothers only received one, instead of two separate Presents, or keepsakes, called "Luhana;" that the invitations to the Cast on the death of her husband's first Wife were in the name of his Father, not in his own; and that the invitations on Huree Bhaee's death were in the name of Huree Bhaee not of his Son Govind Bhaee.

The Court thought from the evidence before them, that no separation of Families and Interests was proved, but to ascertain the Fact more clearly, the Documents, including seven produced by Respondent relative to the management and concerns of the Firm, were referred to the House of Atmaram Bhookun to say, whether Adeetram and Hurce Bhaee, up to the death of the former, were partners in the houses at Basseen, Poona, and Bombay, or not?

The answer was in the affirmative, declaring the Brothers to have been partners, principally from the seven Papers produced by Respondent, which they pronounced to be quite correct.

The Court then asked their Pundits, in what manner the property of Adeetram deceased should be divided between Respondent Phool, her son Govind Bhaee, and Appellant Goolab, seeing that the husbands of the Appellant and Respondent were Brothers and lived together, and were in partnership, both being since dead?

They answered, "Huree Bhaee and Adeetram, sons of Dwar-
" ka, having been partners in trade, and united in their Fami-
" lies, and Huree Bhaee dying first leaving a son, Govind Bhaee,
" whilst Adeetram left no issue, Govind Bhaee is according to the
" Dhurm Shastr the son of both, (2) and is entitled to the pro-
" perty of Adeetram, being responsible for his debts, (3) and
" legally

(2) Munoo 9th v. 182. quoted in Surat Reports No. 14.

(3) Mit. Book second, leaf 20th, page 2nd, line last, in the Runadanu Prukurnu, it is written

" legally bound to keep Goolab, the Widow of Adeetram, in his " house as creditably as he would his own mother as long as she " lives, and to defray the expences of her funeral ceremonies. " We have read and considered the will, which is not at all at " variance with the Shastr, (4) and we are of opinion, that if " Goolab disagree with Govind, and should wish a separation, " there is no objection or legal impediment to Govind Bhaee " acting according to the directions of the Will in such case."

The Court annulled the Decree of the Surat Court, and decided, that the Appellant would become entitled, on her attaining the age of 21 years, to receive the provision made for her by her late husband in the Will, and to no more.

Decree 29th Nov. 1814.

The Sudur Udalut, on the case coming before them, thought it admitted of further investigation, whether the Brothers were separate in interests or not, as the proof at present was not clear.

Sudur Udalut. Sir E. Nepean, *President.* G. Brown, J. Elphinston,

They therefore called up certain persons of the Beesa Morh Bunyun Cast, put a Question to their own Law Officer, examined the accounts of the Bombay and Basseen Firms, and issued a Precept to the Court of Appeal to examine those of the Surat Firm, and to ascertain from the members of the Cast there, whether the Brothers were united or separate. The points referred to the Cast in Bombay were, whether by their Customs, the sending of one Luhana, or Present only, to two Brothers; the issuing of Invitations on the death of one of their Wives in the name of their common Father; and the issuing of similar Invitations on the death of one of the said Brothers in his own name, and not in that of his Son, would prove, beyond a doubt, that the two Brothers had not made a separation?

The

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written " In a case, where one man takes the wife, and another takes the Estate, of a man " deceased, who also left a Son, then he who takes the Estate, must pay the debts of it." Cole. Dig. 1st 272. from which is to be understood that acquisition of any Estate, involves liability for its debts; otherwise the quotation is not appropriate.

(4) Only because it does not deprive the legal Heir of any of his rights, Vide Sudur Udalut Shastree's opinion proving wills, to be either unnecessary, or illegal.

The evidence of the Cast in Bombay shewed " that a Single " Present, or Luhana being sent to two Brothers was proof of " unity of their Interest, that if united, the invitations would be " sent in the name of the elder Brother, and if separate, the In- " vitations on the death of either Brother would be made in the " name of the deceased. That they are made in the name of " the Father of a person dying without leaving a Son, but if he " leave a son, they are given in the name of the deceased. " Notice of separation is given by the person sending Rupee $1\frac{1}{4}$ " and a lamp prepared with Ghee, through the Nyat Gour to " the Temple of their Tutelar Deity Ramu. Lastly, that two " persons are not necessarily united, in a Family point of view, " by being partners in trade."

That of the Cast at Surat was almost unanimous in proving, that all Invitations and presents by the Cast were made to the Brothers jointly, although they were completely at variance as to their living, trading, and eating, together.

The Pundit of the Sudur Udalut stated, If Huree Bhaee and Adeetram were an undivided Family, the Heir is Govind Bhaee, he being bound to maintain Goolab and Phool, and to supply them with what is required for pilgrimages and religious ceremonies. In the Dayu Vibhagu of the Muyooku are these words of Narudu " Among the Brothers, if any one die without issue, or " enter a religious order, let the rest of the Brethren divide his " wealth, except the Wife's separate property. Let them allow " a maintenance to his women for life." So the Sons of persons deceased shall alone take their father's share. (Mit. Dayu Vibhagu, leaf 55th, page 2d, Line 10th, Cole. Mit. 326.) If Huree Bhaee and Adeetram divided their joint property, and resided separate, Goolab is the Heir to Adeetram's property. This is shewn by the following passage of Yagnyuwulkyu. " The wife, and the daughters" (and their sons) " also; both " parents; brothers likewise, and their Sons; gentiles; (5) cog- " nates;

(5) For the definition of Gentiles, Vide Note (1) to case No. 43.

" nates; (6) a pupil and a fellow student; on failure of the " first among these the next in order is indeed heir to the Estate " of one who departed for heaven leaving no male issue. This " rule extends to all persons and classes." (Mit. Book the second, leaf 55th, page 2d, line 6th, Cole. Mit. 321) Mere partnership in trade does not constitute one person the Heir of another. The Will is valid in favor of Govind Bhaee if no separation had taken place. If it had, then the Will is illegal under the above Quotation from Yagnyuwulkyu. As to what constitutes a divided Family, Brihusputi, as quoted in the Muyookhu, says " Those whose income, expenses, and wealth are " separate; who reciprocally lend money at interest, and who " make commercial bargains with each other, are doubtless " disunited," (Cole. Dig. 3d 427.) and separate expenditure, and mortgage, Intercharge of Interest, and separate Buying and Selling, are undoubted proofs of such Division. In the Mitakshura (near the end of the Dayu Vibhagu) are these words of Yagnyuwulkyu " When partition is denied, the fact of it " may be ascertained by the evidence of near Kinsmen, then of " relations more distant; then of witnesses who are unconnected " with the parties; then by written proof, or by separate acts of " Ownership in house or field." And the same Chapter (Dayu Vibhagu) concludes with these words of Narudu, quoted also in the Muyookhu " The religious duty of unseparated brethren " is single; when partition indeed has been made, religious du- " ties become separate for each of them." (Cole. Mit. last page; and Dig. 3d 417.) By which means it may be found out whether a family has remained undivided or not.

The Court of Udalut at Surat called a Punchayut of Merchants, who would give no opinion on the accounts of the Surat Firm, but that expressed by the umpire chosen to settle this point was, that a partnership had all along subsisted, up to the date of Adeetram's death.

From

(6) For that of Cognates, Vide Note (4) to case No. 25.

From all the foregoing proceedings the Sudur Udalut were of opinion, that such a separation of Interests, as was contemplated by the Shastr to amount to a Family Division, had not taken place in this instance between Huree Bhaee and Adeetram, and that Govind Bhaee, the, Nephew of Adeetram, was consequently his Legal Heir, bound however to maintain Appellant Goolab. The Court therefore affirmed the Decree of the Court of Appeal, which declared Appellant entitled only to the Provision made for her in Adeetram's Will, and to no more. The Estate of Adeetram was made liable for all Costs.

Decee 9th Sept. 1816.

N°. 38.

JALA HUREE SINGH HURBUNJEE.....Appellant,

VERSUS

MULIK SHEER BHAEE and others.....Respondents.

Sudur Udalut, Nos. 96 and 97 " 1815. Sir E. Nepean, *President.* M. Nightingall, J. Elphinston, Decree 7th March 1815. Appeal against the Decree of the Provincial Court, disallowing Appellant's claim for part of the villages of Hurmuntala and Bhukurnes, which decision was affirmed by the Sudur Udalut.

THESE two suits are the same as those reported in " Suits " for Landed Tenures appealed to the Provincial Court at " Surat," among which they stand last but one.

The Sudur Udalut dismissed the appeals further preferred to them, fully concurring in the decision passed by the Court of Appeal on these claims.

N°. 39.

NUROTUM SHEOLAL and his Goomashta...Appellants,

VERSUS

ROOSTUMJEE NUREEMANJEE.....Respondent.

Surat Udalut, J. Romer, *Judge.*

THIS suit was originally filed by Respondent on the 19th October

October 1813 to recover from Appellants Rupees 919-3-20 being the value of 420 German Crowns, at the rate of 2-0-76 per Crown, which were given by Respondent to be disposed of for a Return in Surat currency by Appellants, who however refused to restore either the Crowns or their value.

Claim to recover from Appellant, a Broker, the value of some Dollars given to him by Respondent to dispose of.

Defence, that the Dollars were given to Appellant in part payment of a Bill of Exchange procured for Respondent, and that although the Bill was subsequently dishonored, Appellant, as Broker, was not liable for the loss.

Zilla Court decreed that as the Dollars were given by Respondent as value or consideration for a Bill procured for him, Appellant could not recover.

Court of Appeal held that Appellant, as Broker became liable to Respondent for the amount of the Bill on its being dishonored.

Sudur Udalut decided on the evidence of Merchants both of Bombay and Surat, that a Broker does not become answerable for the amount of a Bill of Exchange procured by him in case of its being dishonored. The Provincial Court's Decree was reversed, and that of the Zillah affirmed in Appellant's favor.

Appellant's account of the transaction was as follows. His father, Sheolal Ishwurdas, was a Bill Broker, and generally employed in that capacity by Respondent in his dealings. Respondent through his Agency, obtained a Bill upon Bombay for Rupees 1,000 from Duyaram Nurseedas, in part payment of which he was to give 415 Dollars. When Appellant was sent by his father to Respondent to fetch them, two proved short of weight, and were returned to him. Dollars just then fell considerably in value, and Respondent requested the father not to pay them to Duyaram, but pledge them with some other person, which he did, raising Rupees 875 upon them, and, taking up Rupees 118-3-00, with Respondent's consent, from Kuhandas Jewundas, paid the amount Rupees 993-3-00 to Duyaram. The Bill was however dishonored in Bombay, and the Drawer Duyaram, had since absconded. Appellant concluded by saying he was not responsible for this, and Respondent had no claim therefore against him.

Respondent denied this account, and said that the said Dollars were actually given to the Father for sale, and for no other purpose whatever.

The Court called for proof of the Bill of Exchange, when Shtreef Alee Nana Bhace deposed that he had Houses of Agency at Surat and Bombay ; was not in the habit of trading in Bills, but sometimes had them drawn on him by his constituents. Received word in a letter from Bombay dated 14th Asvin Sood 1869, or 9th October 1813, that four Bills had lately been presented to his House there for payment, but dishonored because they had no Fund in their hands belonging to the Drawer. The Bills were presented, one by Kuhandas Boolakheedas

kheedas for Rupees 2,075; by Moorleedhur Shumbhoo for Rupees 1,000; by Fureedoonjee Suhoorabjee for Rupees 1,000, *the Bill in dispute*; and by Ramdas Bhugwandas for Rupees 1,025. These Bills were all fraudulently drawn upon him by Duyaram Nurseedas without his having Funds in his hands belonging to that person; could not say, in answer to a question by Appellant, whether payment by Respondent of Rupees 1,000 would appear in the Bombay Books, or not.

Atmaram Lukmeedas proved the admission by Duyaram, in presence of Respondent and other persons (one of whom corroborated this), that Sheolal had paid him the amount of the Bill.

The Court obtained, by a commission to the Senior Magistrate of Police, the evidence of Shureef Alee's Goomashtas in Bombay corroborative of that given by Shureef Alee. The Bill in dispute appeared from the evidence to be that presented by Fureedoonjee Suhoorabjee on the 14th Asvin Sood, or 9th October, and dated the 7th of the same month, in payment for value received from Respondent, Roostumjee Nureemanjee.

An extract made from Appellant's Day Book shewed that he took up Rupees 875, from Dhun Baee, Widow Hurjee Bhaee, on pawn of 415 Dollars, "the property of Respondent," on the 8th Asvin Sood, at $4\frac{1}{2}$ per cent per month interest, and paid it on the same day "by Respondent's order" to Duyaram Nurseedas, Respondent being charged interest at 5 per cent upon the amount.

Respondent called witnesses who proved delivery of the 415 Dollars, at the rate he mentioned in the Plaint. One of them only could speak to Respondent's having told him that Appellant was to get them melted at the mint, but in answer to a question by the Court afterwards, he replied Appellant himself at the time mentioned it.

The Judge held that as the Dollars appeared to have been given

given by Respondent to Appellant as value or consideration for a Bill procured by Appellant for him, the Respondent had no further claim upon him, and the suit was dismissed, Respondent paying all Costs.

Decree 25th May 1815.

The Judges examined Appellant as to his having received, or agreed for, any Brokerage, which he thereupon declared was fixed at 2 annas per hundred Rupees. On considering this claim it appeared to rest upon whether Appellant ever gave Respondent an equivalent for the Dollars 413 of which he acknowledged receipt. The equivalent, by his statement, was a Hoondee, but delivery of it by him to Respondent was certainly not proved in the lower Court, and he declared his inability to adduce any further evidence of it now. The Court held that if even Receipt of it by Respondent were proved, yet its having been subsequently dishonored rendered the Broker responsible for its amount. The Decree of the Zilla Court was reversed in consequence, judgment being given for Respondent in Rupees 902-1-62 being the value of 413 Dollars, of which receipt was admitted by Appellant, at the rate of 218 Rupees per 110 Dollars; also interest at 9 per Cent from the date of filing the suit in the lower Court to that of this Decree, 21st November 1815, and Costs.

Court of Appeal,
G.L. Prendergast, *Chief Judge*.
T. M. Keate. *2d Do.*
Decree 21st Nov. 1815.

The Court felt desirous of ascertaining more clearly than had been yet done, first, whether a Bill Broker, by receiving Brokerage on a Bill negotiated through him, becomes answerable for its amount if dishonored; And second, whether the Bill was received by Respondent, or not?

Sudur Udalut.
Sir E. Nepean, *President*.
M. Nightingall.
G. Brown,
J. Elphinston.

Fourteen respectable Native Bankers and Merchants of Bombay gave evidence before the Sudur Udalut "that a Broker "is not liable for the amount of a Bill of Exchange if procured "by him, and afterwards dishonored." The evidence of two first rate Bankers, and two Merchants taken at Surat under precept from the Sudur Udalut was to the effect "that a Broker "who receives from his principal a certain sum in Cash to pro-

"cure

" cure a Bill of Exchange and receives any amount of Commis-
" sion upon delivery of the Bill is not liable for the amount, if
" dishonored, the loss in such case falling upon the principal
" who took it up." The sum of 420 Dollars was found in Respondent's Books, at Appellant's debit, 415 paid to Nurotum personally, and 5 to him and Goomashta Bhugwundas. Fureedoonjee Suhoorabjee was called before the Sudur Udalut, and deposed that the Bill in question was inclosed to him in a letter from Respondent himself, as also that it was dishonored when presented for payment.

It having been satisfactorily established therefore that the Bill did come into Respondent's hands, and that Appellant, as Broker, became in nowise responsible for its amount by its being subsequently dishonored, the Provincial Court's decision was set aside, and the Decree of the Zilla Court affirmed in favor of Appellant.

Decree 12th March 1817.

N°. 40.

THARAMUL PURUSRAM; MOOKOOND RAEE ASKURUN and BISHUNDASS ASANUND, composing..... The Firm of DHOOLACHUND KHUNDAREE-MUL,..... } *Appellants,*

VERSUS

BALMOOKOONDDAS GOKOOL, on the part of ASARAM BRIJBHOOKUN,.... } *Respondent.*

Surat Udalut. J. Romer, *Judge.*

Claim by an Insurance Broker to recover from Appellants the balance due upon certain Respondentia Notes negotiated by them.

RESPONDENT first sued Appellants in the Zilla Court on the 28th December 1813, to recover from them the sum of Rupees 1,113,3 being Rupees 600 Balance Principal, 441,1, Profit, or Premium, and Rupees 72,2, interest, due upon 14 Bengal Respondentia Notes executed by them to Respondent in A. S.

1868

1868 or A. D. 1812, through the Agency of Broker Munchharam Muyaram.

Appellants claimed deduction for damage that their Goods had sustained. Respondent again contended that Respondentia being on the Block, nothing but loss of the Vessel could render him liable for damage to the goods, or free Appellants from their obligation. Decreed in Respondent's favor under precedent of a former decision of the Court of Appeal, which in this instance again upheld the principle that Respondentia is on the Block or vessel *alone*. Sudur Udalut reversed these decisions, and declared Respondent bound to allow Appellants deduction for the damage to their goods.

Appellants complained because Respondent had not in his Plaint more fully stated the particulars of the Notes he alluded to, and proceeded to say that among these Notes, was one of Rupees 520, with Premium, on the Ship Uhmud Shah, wrecked in A. S. 1868, and they had a claim for that sum upon Respondent, as also for the value of 4 Bales of silk shipped in the same Vessel; they at the same time said that Respondent's claim upon them was quite false and unfounded.

Respondent in reply explained that the Bales of Silk &c. were shipped on board the Uhmud Shah, which arrived in safety at Bombay; the loss by wreck was therefore false; and the Goods were landed by Appellants in Bombay, which proved they were not damaged by Water, otherwise they would have let them lie at the Custom House for the benefit of the underwriters. But he argued, that by the Rules of Respondentia dealings, the Transaction was on the Block or Ship, and nothing but total loss of it would render him liable, as no mention was made in the Bond of responsibility for partial damage of the Goods.

Appellants in rejoinder said that the Uhmud Shah got aground on her return from Bengal in A. S. 1868, in the inner Channel of Underee Kunderee, (the Islands of Henry and Kenery, at the mouth of Bombay Harbour) and sustained damage. They had consequently a claim on Respondent under the Respondentia Bond for Rupees 500, which they had executed to him on that Vessel. They had passed him another of Rupees 2,000, upon 9 Bales of Silk, Six of which, shipped on board the Gunjawur, they received in safety, but the other 3 being on board the Uhmud Shah, were damaged when she got aground. They were landed by the House of Bruce Fawcett and Co. and remained some time at the Custom House. Appellants received a writing from the underwriters of Surat, agreeing to bear their proportion

proportion of such loss as Appellants should appear to have sustained, after sale of the Goods, and payment of Customs. They, Appellants, accordingly procured a Mehuzur or certificate from persons in Bombay to prove the Damage, and after protesting the Goods, sold them for the benefit of the underwriters. Respondent was indebted to them in the sum of Rupees 452-1-36 his share of the loss on the 3 Bales of silk, and for Rupees 525, his share of the Insurance. They Admitted themselves his debtors in the amount of Rupees 421, for the Ship's safe arrival, and prayed for decision, after adjustment of the respective accounts.

Respondent exhibited three Respondentia Bonds all dated Friday 3d Magh Vud A. S. 1868, or 31st January 1812, and executed by Appellants, the two first in the amount of Rupees 1,040 each, upon 9 Bales of Silk, marked 121, to be shipped upon such vessel as their Agent thought proper in Bengal for Surat. They contained the following clauses; by the first, Risk was to commence upon the vessel's weighing anchor in the Bengal River, and to cease on her dropping anchor at Surat; second, The underwriters were not to be liable for loss, if Goods should be thrown overboard, in whole or in part; third, In the event of the Ship's being wrecked, or any accident at Sea, the Goods saved were to be divided among the underwriters in their respective proportions of the risk. Interest at 3 quarters per Cent per month was to be charged sixty seven days after payment of the above sum.

The third Bond was dated 10th of Udheek Vyshak Sood A. S. 1868, or 20th May 1812, and ran as follows " Dhoola-
" chund Khundareemul writes to————————for Rupees 520
" (five hundred and twenty) being the exact amount which
" shall be paid on account of Respondentia for one homeward
" voyage of the Uhmud Shah, Captain————————The risk
" shall commence when the Ship weighs anchor in the River of
" Bengal, and shall cease when she casts anchor at the Surat
" Bar. If the Goods are thrown overboard in part or whole,

" the

" the Respondentia lender is not answerable. Should any acci-
" dent happen to the vessel at sea, and any Goods be saved,
" the Respondentia lenders shall divide among them according
" to their shares. Interest shall commence at the expiration
" of 67 days from this date at 3 quarters per Cent per month."

Respondent's account Current with Appellants on these transactions, shewed a Total of Rupees 2,013-3-00 which, after a payment of Rupees 900, credited to Appellants, left the Balance sued for. Premium was charged at 5 per Cent generally, with a deduction of half per Cent in consequence of the Ulmud Shah not coming on to Surat.

Decree 4th Sept. 1815.

The Judge summing up the case, decreed that in conformity with a decision of the Court of Appeal dated 18th August 1815, the loss on Goods partially damaged is to be borne by the Owners, and not by the underwriters on Respondentia and Insurance, and therefore Respondent's claim was just and equitable against Appellants, who were ordered to pay it with costs.

Court of Appeal, G. L. Prendergast, *Chief Judge.* T. M. Keate, *2d do.* J. Sutherland, *3rd do.* Decree 20th Feb. 1816.

The Appellants appealed against the decision in their Suit, which the Court of Appeal found to be in all respects precisely of the same nature as that in which they had passed the above-mentioned Decree of the 18th August 1815, and in conformity to which precedent, the Zilla Judge's Decree was affirmed with costs. The Court at the same time observed that the lower Court had not made the distinction which it was in their opinion material to attend to, between the different Rules and principles applicable to Respondentia or Awuk, and Insurance, or Veema.

The precedent quoted, and with this Appeal afterwards handed up to the Sudur Udalut, was,

THARAMUL PURUSRAM, MUKUN RAEE ASKURN and BISHUNDASS ASANUND.....,.... } *APPELLANTS,*

VERSUS

LUKMEEDASS LALDASS.....RESPONDENT.

Court of Appeal, No. 401 (Special Appeal,) G. L. Prendergast, *Chief Judge.* J. Sutherland, *3rd. do.* Decree 18th Aug. 1815.

THE Petition was originally presented to the second Judge then sitting, on the 14th February 1815 by Appellants praying for admission of a special Appeal (the cause not being of the amount appealable by Regulation) against the decision in appeal of the Zilla Judge affirming a Decree of the Register's Court against them respecting some Policies of Insurance on the Uhmud Shah.

It was the opinion of the sitting Judge upon a consideration of the Policies, (which insured from all Risks from the Hoogly to Surat Bar, and ought not to be set aside by the evidence of underwriters who had a manifest interest in so doing) that the petition ought to be admitted, and he referred it to the next Court, when the Chief and second Judges resolved to admit the Special Appeal in this case, because the decision upon it was of great importance, as affecting commercial interests generally in the point at issue between the parties.

The present suit was caused by Appellants debiting Respondent for the amount damage sustained by their Goods on board the Uhmud Shah when she got aground, Respondent claiming the full amount lent by him on Respondentia with the stipulated Premium, on the grounds that the Risk of Respondentia lenders is on the Block of the vessel solely, and that the Uhmud Shah being safe, he is not responsible for any damage to the Cargo, which must fall exclusively on the owners.

The Court endeavored to prevail on the parties to submit their difference to the arbitration of one or more respectable Merchants, but in vain, and were therefore under the necessity of coming

ing to a decision, in doing which it was observed, that neither party seemed to make any decided distinction between Respondentia and Insurance, nor had any been drawn by the lower Courts on the point. The words had been in the pleadings used indiscriminately, and even both together as Avuk Veema. Appellants were therefore called upon to explain their own conception of the difference between Avuk and Veema.

They stated the only difference to be, that in Avuk or Respondentia, the Merchant receives the Cash before hand, binding himself to repay it to the lender with the Premium agreed for, upon the safe arrival of the Goods, or Cargo on which it was taken up, and that in case of these Goods being lost, the lender loses his money; if damaged, the amount lent on Respondentia with Premium is credited to the lender, and he is debited for the amount damage, and the balance only is repayable to him. That in Veema, or Insurance, the Merchant pays the Premium to the underwriter beforehand, and in case of loss or damage the merhant afterwards recovers from the underwriter the amount injury.

Respondent did not question the Appellant's explanation, but maintained that Avuk is money lent to a Merchant to be by him employed in commercial speculation, on condition to repay the amount with Premium on the arrival at her destination of the Vessel on which it is risked.

The Court finally observed, that both Respondentia and Insurance are very imperpectly defined at Surat, being rather Systems of wagering and Gambling than Sources of Security and convenience to Trade, and witnesses could no doubt be produced to prove the definition given by each party to be equally correct. After the best consideration they could give the subject, Respondentia or Avuk, was in their opinion, money lent, as in the present case by Respondent to Appellants, and repayable now with the stipulated Premium, in consequence of the safe arrival of the Uhmud Shah, the Vessel upon which it was lent.

Appellants

Appellants having several Suits of a similar nature for large sums depending in the Zilla Court, were recommended to prosecute to a decision one of them of a higher amount than Rupees 800, and carry it through the Court of Appeal to the Sudur Udalut, in order to obtain from the highest authority, a decision upon a Question of such importance to the commercial community of Surat. In the mean time the Zilla Judge's decision in the present case was affirmed with Costs.

The second Judge having been absent from the hearing of the first cause, now recorded his sentiments on the point again brought forward, (as directed in a suit of an appealable amount.) After stating the facts of the case, the second Judge observed that in opposition to the plea of Appellants, (that the Bond was good only upon condition of the safe arrival at Surat Bar of the Goods on the Uhmud Shah, whereas the Ship never reached the Bar, and the Goods were partially lost,) Parole evidence was adduced of the Custom of Surat, according to which Respondentia Holders were liable only for total loss, partial loss falling on the Owner of the Goods. Both Courts appeared to have relied upon the Parole evidence as to the Custom of the place, and thereby the Owners of the Goods were declared liable for the penalty of their Bonds. To that decision he held the following objections. First, that there was a presumption against the Parole evidence, that the witnesses might probably have an interest in attempting to establish that as the Law of Surat which did not consist with the Custom of other places of trade; or with the obvious tenor of the Documents produced; in point of fact, that the witnesses being chiefly underwriters, or Insurance Brokers of this place, had a decided interest in setting up such a plea of special usage. Second, that Parole evidence was not valid against the plain intent, and literal meaning, of a special contract, and that in this case, the fair construction of the Terms, and the plain condition of the obligation, were opposed to the Parole evidence. For by the first clause of the third Bond, relating specially to the Ship, the risk

was

was only to cease on the safe arrival of the Ship at the Bar of the Surat River. In the third, it was provided expressly that partial loss should be at the risk of the lenders, for by the Terms of the engagement, in the case of partial loss, which actually happened, the partial recovery was for the benefit of the holder. What else could be intended, but that he was to lose the money lent upon his speculation in the first clause, and to have the partial indemnity provided by the third?

From all which considerations the Second Judge was of opinion that Respondent ought not to have recovered upon such a Bond, and that the Judgment of the Zilla Court ought to have been reversed.

The Sudur Udalut decided upon this case that Respondeut by the Terms of the Bond entered into with Appellants, was liable for the damage of the Goods therein specified, and the amount, after deducting Premium and proportionate value of the Goods saved, was decreed to be defrayed by him with costs.

Sudur Udalut. Sir E. Nepean, *Pres*, M. Nightingall, G. Brown, J. Elphinston,

Decree 8th Aug. 1817.

Note. The Firm of Tekchund Ghaseeram preferred an Appeal from a decision of the Court of Appeal in favor of Lukmeedas Laldas on a similar Avuk Bond on the same vessel, which decision was given likewise in Appellant's favor by the Sudur Udalut.

N°. 41.

POONJEEA BHAEE, and DADA BHAEE Sons of RUTTUNJEE MANUKJEE PARUK.... } *APPELLANTS,*

VERSUS

PRANKOONWUR, daughter of BINDRABUN GOVURDHUNDAS..... } *RESPONDENT.*

THIS suit was presented on the 26th April 1814, by Appellants,

Surat Udalut. G. W. Anderson, *Assist. Judge.*

Claim by Appellants, against Respondent under a Note of hand passed to them by herself and husband making over in Security for the debt a House left to the Respondent by her Father. Zilla Court, conceiving the Note proved, decreed its amount to Appellants. Court of Appeal decided under a Vyuvusta of their Shastrees, that the Note, even if duly established was null because a Woman having a Son alive cannot assign away his inheritance without his consent, and dismissed the Appellants, claim, as did the Sudur Udalut. on the same principle.

pellants, to recover from Respondent Rupees 2,426-1 principal, and Rupees 373 interest, total Rupees 2,799-1 amount due upon a Registered Note of hand passed in the year A. S. 1868 or A. D. 1812 to Appellants, jointly by Respondent and her husband, in security for which they had mortgaged a dwelling house to Appellants. The Respondent's husband, Kishundas Muthooradas, being absent, they now sued Respondent Prankoonwur, to recover the amount due upon the note from her.

Respondent positively denied all knowledge of the note upon which she was sued, declaring she never received a single Rea from them, and neither got the Note executed, nor registered, and witnessed.

Appellants in reply begged the Wukeel who attended at the Registry Office on Respondent's behalf, and the witnesses to the note, might be called up and examined upon it.

The Note in question was dated 6th Shravun Vud 1868, or 28th August 1812 from Respondent and her husband, binding themselves "jointly and severally" to repay the sum of Rupees 2126-1-00 with interest at 9 per Cent, within two months from that date, and agreeing to make over to Appellants in default of payment, the House in which they dwelt as security for the debt, for which they declared themselves still liable, even in the event of any accident happening to the House.

Appellants brought witnesses to prove execution by Respondent of the Note, and of the Wukalutnamu empowering one Keshurchund to appear on their part at the Registry of the Note; the Registry was also spoken to by one of them, a Partner of Appellants in business, who said the Note was given for Pearls received by Respondents.

The Assistant Judge wished to discover what value had been received, as none of the Witnesses could speak to that point.

Appellants thereupon exhibited a Decree of Mr. Bourchier in their favor on a former claim of their's for Rupees 1,606-3-52

against

against the husband of Respondent, who at that time confessed it to be just, and passed this Note for the Amount thus decreed, and for some Goods, making up the principal, or amount for which it was passed.

The Record was examined, and Appellant's statement respecting the suit, and Respondent's husband's acknowledgment of it found to be true, and as no receipt by Appellants of its execution, or return of the Nazir to that effect was found, it was to be inferred that the Note now in dispute was passed for satisfaction of this decree; and the Goods and the Note had been duly proved in evidence. Moreover the condition under which persons binding themselves jointly and severally, (Yeke Muthe Yeke Juthe,) in any transaction, was such, that any one of them against whom a claim was made, was held liable for the whole amount, having his action of recovery, after satisfaction of the claim, against the other persons bound with him. Therefore the Court held that Respondent Prankoonwur was justly indebted to Appellants in the sum sued for, which was decreed to them, Costs being borne by Respondent.

Decree 19th 1815.

Prankoonwur, in her Appeal against this decision took exceptions to all the witnesses in the lower Court, as in the interest of Appellants, and adduced in proof of their perjury, the contradiction between the story of the Pearls, and that of the former Decree.

Court of Appeal,
G. L. Prendergast, *Chief Judge.*
T. M. Keate, *2rd do.*
J. Sutherland, *3rd do.*

The Judges thought there were great doubts of the authenticity of the Note or Bond, but observed the Suit hinged upon a point of Hindoo Law, whether a Woman, having a Son and Heir, is at liberty to assign away that Son's inheritance, handed down through her from her Father in liquidation of her husband's debts, or not? For Appellants admitted that Respondent had a Son then between 10 and 11 years of age, born therefore before execution of the Bond.

The Pundits being called upon to expound the Law in the

case,

case, declared that a Woman who had succeeded as Heir at Law to property left by her own Father, (1) cannot dispose of that property in liquidation of the debts of her Husband, unless her Son, having already attained the age of 16 years, or age of discretion, (2) shall consent to the act. She is at liberty, if she feel inclined, to bestow it in a gift of charity. (3)

Decree 22d March 1816.

The Decree of the Zilla Court giving Appellants the amount of their note was reversed, because such note, even if passed by Respondent, was illegal, and She, Respondent Prankoonwur, was therefore declared free from any claim under that note.

Sudur Udalut, Sir E. Nepean, *Pres.* M. Nightingall, G. Brown, J. Elphinston.

The Shastree of the Sudur Udalut on having the same question proposed to him, declared that a woman deriving property from her Father or Uncle, has no right to apply such property in liquidation of her husband's debts, nor give it to any other person, until her son has attained his 16th year. After that with his consent, but not without it, she may sell or give it to whomsoever she please. (4)

Decree 8th Aug. 1817.

This exposition being still more positively against Respondent's power to make away with the property of the Heir, than that given in the Provincial Court, the Decree of that Court, rejecting Appellant's claim against her, was affirmed and the appeal dismissed.

No. 42.

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(1) By the Law " The Wife, the Daughter and her Son" &c. quoted in Case No. 37.

(2) Vide the authority for this in Surat Cases, Nos. 10 and 27.

(3) Vide note to Case No. 13.

(4) Ditto——————Ditto.

N°. 42.

MALOO BHAEE KUREEM BHAEE,.....Appellant,

VERSUS

PESHTUNJEE KALA BHAEE, Wukeel of Court and CHIMUNLAL HUREE WULUBH, Deputy Nazir..... } *Respondents.*

Surat Udalut. G. W. Anderson, *Assist. Judge.*

Suit by a man holding a Decree of Court against a Debtor, to compel his own Wukeel, and the Deputy Nazir to make good the amount of his Decree under plea of their having unlawfully released his Debtor when in confinement to enforce execution of it. Claim thrown out in all the Courts.

THIS Suit was filed on the 12th July 1814, by Appellant to recover from Respondents the sum of Rupees 3,281-0-00 amount, with costs, of a Decree given in the Assistant Judge's Court in favor of Appellant against one Moosa Bhaee Daood Bhaee, in execution of which that person was put in Jail, but improperly released through Respondents, from whom he therefore sought to recover.

The Appellant explained that he instituted a suit on a Note of hand for Rupees 8,000, and Rupees 2,280 on two Bills of Exchange and Duplicates against Moosa Bhaee Daood Bhaee, constituting Respondent Peshtunjee his Wukeel to carry it on. Mr. Bourchier passed a Decree in Appellant's favor on the 30th March 1810, and for execution of which, Moosa Bhaee was confined in Jail, Appellant paying the usual subsistence money very regularly when due, but was astonished to find that Moosa Bhaee was released without notice given to him, or execution of the Decree being had upon the Debtor. On discovering what had happened, he complained by Petition to Mr. Bourchier, and again to Mr. Barnard, who after inquiring about the matter from Respondent Chimunlal, told Appellant he had his action against Respondent Peshtunjee, who had given the order for release of the Debtor. Appellant now filed his suit therefore to recover damages in the amount he had lost by his debtor's release, either from the Wukeel Peshtunjee, or from Chimunlal, upon whom the other Respondent threw the responsibility of releasing him.

Respondent

Respondent Peshtunjee Kala Bhaee for himself answered, that the claim against him, as being responsible for Moosa Bhaee, was false. On becoming Wukeel of Appellant, he had paid the Commission and Costs out of his own pocket, in this Suit, to the Decree in which he referred the Court. He declared that Appellant had raised this false claim to evade repayment of the Commission and Costs which Respondent had been obliged to pay for him. Appellant and Moosa were both subjects of the Murhatta state, the former having fled to Surat to avoid persons whose money he had embezzled in his own country, and the latter was so poor that he was confined for security to appear and defend the Suit. He continued, that Mr. Bourchier, as Judge, was vested with full power to confine and release, as every day's practise testified, and it would be shewn in the progress of this Suit that Moosa was released at the instance of one of Appellant's Servants. The Nazir never released a person without the order of the Judge, and always took a receipt from the person at whose instance the order was granted. But he defied Appellant to prove any receipt of his in the Records. Neither Appellant nor Moosa paid him his Fees, nor did the latter pay any part of the sum decreed against him. Lastly, he pleaded that by the Wukalutnama which Appellant had given, the acts done by him were not questionable.

Respondent Chimunlal pleaded also, that the Debtor Moosa was released by an order of the Judge, who had full power to grant it, and he, Respondent, merely carried the orders of the Court into execution having no power to exceed or disobey them. He said Moosa Bhaee's release would be shewn to have been caused by Appellant himself.

Appellant in reply defied Respondents to produce any paper under his hand for release of Moosa, for which act they were, he held, fully liable, jointly and severally, as having procured it without authority from him.

Respondent Peshtunjee rejoined, that the present suit was instituted

stituted to recover from them what Appellant knew he never could squeeze out of the former Debtor in consequence of his poverty.

Respondent Chimunlal rejoined that the Records of the Court would exonerate him, and further pleaded in bar of responsibility in this case, that he was neither Nazir, nor Deputy, at the time the release of Moosa took place, only then acting in the situation.

The following papers were recorded in this Suit.

A Petition from Appellant dated 4th April 1812, for execution of his Decree against Moosa; with an order of Mr. Bourchier the Judge for execution, endorsed on it.

Another Petition from Appellant dated 6th March 1813, complaining that Moosa had been released from Confinement without his knowledge on the Security of a Bohura, at the instance of Respondent Peshtunjee, and praying that as the Wukeel had exceeded his powers, which were only granted for pleading the Cause, and not for taking security, he might be called to account for it, together with the other persons concerned. Respondent The Deputy Nazir having been called up to report upon this, stated that on the 2d October 1811 Respondent Peshtunjee appeared before the Judge in Court with Appellant's Servant Kaloo, and tendered as security for Moosa, one Uhmud Bhaee Isa Bhaee Bohura, who was accepted by the Judge, and Moosa ordered to be released. The Judge, Mr. Bourchier, endorsed upon this petition, under the above Return, on the 8th March, that Appellant must abide by the act of his Wukeel, as acting under full powers from him.

A Third petition presented on the 15th January 1814 to Mr. Barnard, Register in charge after the death of Mr. Bourchier, nearly in the words of the present Bill of complaint, upon which Mr. Barnard endorsed these words " You may prosecute Peshtunjee your Wukeel for redress," and a Fourth Petition to the same

same effect presented on the 12th April 1814 to Mr. Keate the Judge, who advised Appellant to act on Mr. Barnard's order.

Appellant now made a motion to oblige Respondents to give Security for their appearance, which was furnished accordingly; also to take all other papers connected with the Suit from under the Custody of the Deputy Nazir, Respondent, which were accordingly put in charge of the Surishtudar.

Respondent Peshtunjee exhibited a Decree of Mr. Baillie the assistant Register on the 31st January 1814, in his favor against Appellant for Rupees 151-3-90, amount paid by him; in Commission, Rupees 82, Costs of suit, Rupees 24; and provision money Rupees 6 on behalf of Appellant in his suit against Moosa Bhaee, with interest Rupees 38. An extract from the Civil Register was examined and shewed that Moosa Bhaee on the 1st October 1811, presented a Petition to be released on security during one month, on which Petition Respondent Peshtunjee was directed to consult Appellant, and reply; on the next day Kaloo, a Servant of Appellant appeared in Court with Respondent Peshtunjee, and represented, that Moosa Bhaee might be released on the Security of Uhmud Bhaee Bohura, which was ordered accordingly, after the Judge had asked Respondent Peshtunjee whether Kaloo was Appellant's Servant, and received an answer in the affirmative, and that he was there by desire of Appellant. The Security Bond given by Uhmud Bhaee for Moosa's Appearance, was also exhibited.

The Court on inquiry, found that Uhmud Bhaee Bohura was dead, as well Kaloo Appellant's Servant.

The Nazir's Dufturs being called for, shewed no payments of provision money by Respondent Peshtunjee, who had charged Appellant in the suit against him for Rupees 6 on this Head. On inquiry respecting this it appeared that Appellant appealed against the decision of the Assistant Register, but filed a Razee Nama in Appeal.

The

The Assistant Judge, summing up all the circumtances of the case, found that Respondent Chimunlal was in no wise responsible to Appellant, since Moosa was released under the order of the Judge. And with regard to Peshtunjee, it was necessary for Appellant, in order to render his claim against him good, and available, to prove that Peshtunjee had acted with evil or fraudulent intentions in the business. But he had not proved this, and Peshtunjee was acting under full powers from him to do according to the best of his judgment. Appellant's claim against both Respondents was therefore declared not good, and the Suit dismissed accordingly.

Decree 8th Nov. 1815.

Appellant having acknowledged in pleading before the Provincial Court, that he knew of Moosa being at large within one month after he was actually released, and had permitted him to remain so during 17 months, without petitioning the Zilla Court, the Provincial Court held that Appellant by permitting this had virtually acquiesced in the act of his Wukeel Peshtunjee Respondent. The Decree of the Assistant Judge dismissing Appellant's claim against him, was therefore affirmed with Costs.

Court of Appeal.
G. L. Prendergast, *Chief Judge.*
T. M. Keate, *2d do.*
J. Sutherland, *3d do.*

Decree 27th July 1816.

The Sudur Udalut concurring in the views of the case, taken by the lower Courts, affirmed their Decrees, Appellant bearing Costs in all the Courts.

Sudur Udalut.
Sir E. Nepean, *Pres.*
M. Nightingall,
A. Bell,
Decree 5th Nov. 1817.

N°. 43.

SREE BRIJBHOOKUNJEE MUHARAJ.....Appellant,

VERSUS

SREE GOKOOLOOTSAOJEE MUHARAJ....Respondent.

THIS was a case of inheritance, and disputed adoption of very old standing, and before entering upon the proceedings held in

Surat Udalut.
T. M. Keate, *Judge.*

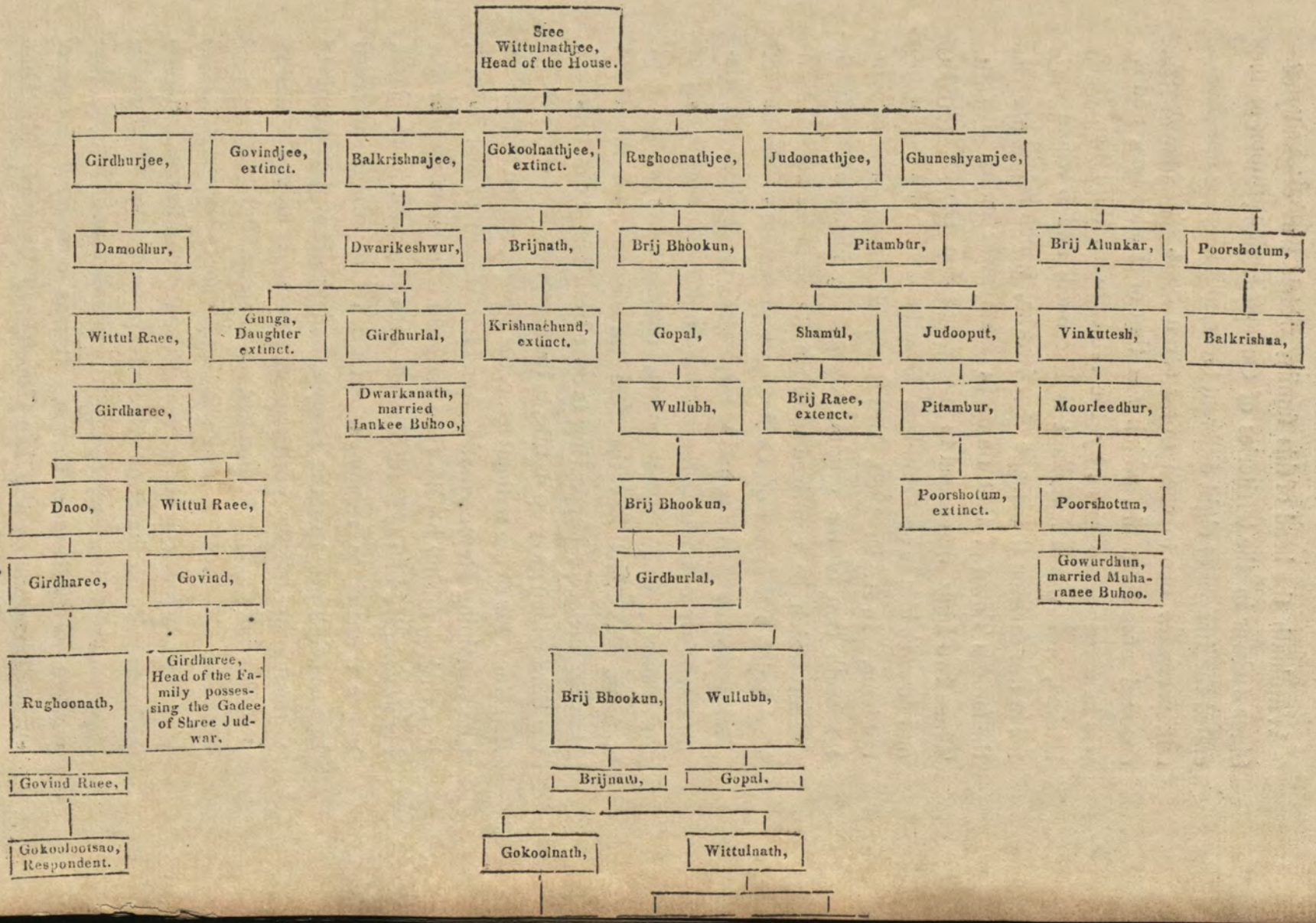
Suit filed by Appellant to recover possession of the Idol and Temple of Balkrishna at Surat.

Defended on the grounds of Respondent's adoption by the last possessor, confirmed by the Emperor of Dehlee, and all the local authorities.

Respondent's title under the adoption declared valid, and upheld in all the Courts.

in it before the Courts, it appears necessary to prefix a short account of its origin and progress prior to the institution of the Udalut at Surat.

The point contested by Appellant, was the adoption of Respondent, but it also involved the descent of the parties, Appellant claiming the possession of the Idol Balkrishna, in preference to Respondent (who had obtained possession of it, in consequence of his adoption by the last possessor, Maharanee Buhoojee) as being descended from the Branch which originally possessed it. The Revenues of the Idol were calculated at Rupees 100,000 per annum.


Sree Wittulnathjee, Head of the House.
Girdhurjee,
Govindjee, extinct.
Balkrishnajee,
Gokoolnathjee, extinct.
Rughoonathjee,
Judoonathjee,
Ghuneshyamjee,
Damodhur,
Dwarikeshwur,
Brijnath,
Brij Bhookun,
Pitambur,
Brij Alunkar,
Poorshotum,
Wittul Raee,
Gunga, Daughter extinct.
Girdhurlal,
Krishnachund, extinct.
Gopal,
Shamul,
Judooput,
Vinkutesh,
Balkrishna,
Girdharee,
Dwarkanath, married Lankee Buhoo,
Wullubh,
Brij Raee, extenct.
Pitambur,
Moorleedhur,
Daoo,
Wittul Raee,
Brij Bhookun,
Poorshotum, extinct.
Poorshotum,
Girdharee,
Govind,
Girdhurlal,
Gowurdhun, married Muharanee Buhoo.
Rughoonath,
Girdharee, Head of the Family possessing the Gadee of Shree Judwar.
Brij Bhookun,
Wullubh,
Govind Raee,
Brijnath,
Gopal,
Gokoolootsao, Respondent.
Gokoolnath,
Wittulnath,

Wittulnath the head of this family, which was originally of Shree Judwar in the territories of Oodepoor, took, and consecrated the Images of eight different Gods, and keeping one himself, presented one to each of his seven Sons. The sixth Son declined accepting his, which was that of Balkrishna, and it was in consequence given by the father to his third Son, Balkrishna, from whom Appellant is descended, and to whom also fell in this division the Image of Diwarka, which is still kept at the famous Town of that name in Kathyawar called after it. These two Idols descended to his Eldest Son Diwarikeshwar, and through him to his Grandson Dwarkanath, who died without issue. In A. D. 1860, Brij Raee, Grandson of Pitambur the fourth Son of the original owner, by means of a Royal firman which he contrived to obtain through his interest with Ourung Zeb Emperor of Dehlee, got possession of the Idol of Balkrishna, at the time taking a release from the then proprietors, who were Gunga, the Aunt, Jankee Buhoo the wife of Dwarkanath, and Brij Bhookun, representative of the third Branch. The Idol was therefore transferred from the eldest Branch, the second appearing to have been then extinct through the third which gave up its title, to the representative of the fourth Brij Raee. He dying without issue, the Idol descended to Poorshotum, remaining Representative, and Heir at Law of that Branch. Poorshotum during his life time resigned it to his namesake the Representative of the Fifth Branch who brought it to Surat, where it has since remained. His Son Govurdhun succeeded him as High priest at the Temple, and dying at the age of 18 without issue, left the possession of it to his Widow Muharanee Buhoo who adopted Respondent as her son, and gave up the Gadee to him in 1794 after she had sat for 52 years as High priestess. From this the present Dispute took its rise. Several petitions were on the Surat Records, presented by Gokoolnath, Appellant's predecessor, against the intended adoption of Respondent by Muharanee Buhoo. It was considered a case of such Magnitude by the then Governor of Bombay, Mr. Duncan,

his Father's curse to resist the entreaties of the Buhoojee to become her Son. He concluded the letter by saying that they were all much distressed at his conduct in trying to get this Idol, seeing they had already three in the Family.

A certificate from Poona, to the same effect as that from Dwarka stating the Genealogy to be the same as above shewn, and declaring that Muharanee could not surrender the Idol to Respondent whilst any descendants of Balkrishna were alive. They likewise entered into the point of adoption, giving their opinion that Muharanee could not legally adopt any but a near relation of Gokoolnath, and only in default of them could she adopt a distant relation. This certificate was dated 13th Jesht Vud Pingulnam Sumvut 1719, Shalivahan or A. D. 1797, and signed by 16 Shastrees.

A certificate from many followers of Vishnoo in Surat dated Saturday 3rd Jesht Sood A. S. 1852 or A. D. 1796, in favor of Appellant's Title to succeed to possession of the Idol.

Respondent exhibited Copies of the correspondence of Brij Raee with Girdhurlal, and afterwards with Gunga and Jankee Buhoo, in which these persons acknowledged Brij Raee as Heir by adoption of Girdhurlal, and Copy of a certificate of this adoption from certain persons at Gokool, drawn up in consequence of Gunga Baee having appointed another person Heir to Girdhurlal during Brij Raee's absence.

The Release executed by Gunga, Jankee Buhoo, and Brij Bhookun to Brij Raee, Son of Shamlajee, dated Sunday 3rd of first Asvin Sood A. S. 1737 or A. D. 1681 stating that they had settled their old dispute respecting the two Images, and the Padooka or Wooden shoes of Sree Acharyu by giving up that of Balkrishna to Brij Raee and keeping the other, of Dwarkanath, themselves; they agreed that the Padooka should be kept by Gunga till her death, and then devolve to Brij Raee, and declared in conclusion that they had no further claim or cause of dispute remaining, andfully relinquished all claim to the Idol Balkrishna for ever.

The

The Deed of Gift by Poorshotum Son of Pitambur Son of Judooput, to Purshotum Son of Moorleedhur, Son of Vinkutesh, giving him whilst in full health, and of his own free will, all his property, being the Idol Balkrishna, that of Brijeshwur, and another; also the Padooka, and all the Ornaments and Utensils connected with the care and Worship of these Idols, with a House and other property situated at Surat. This was dated Thursday 10th of the second Ashad Sood A. S. 1781, or A. D. 1725, and signed by 30 Witnesses.

The Will or Deed by which Muharanee Buhoo adopted Respondent Gokoolootsao and constituted him Heir to all her property, viz. the Idol Balkrishna, the Podooka, or Paoree (Wooden Shoes) with the Income derived from them; making over to him all power possessed by her over her Servants and Disciples, and giving up all her property, Houses, Gardens, Ornaments of Silver, Gold, and Jewellery, Wearing Apparel, Household Furniture, and Utensils, and declaring that no one but him, Gokoolootsao, had any right or title whatsover to any thing formerly belonging to her. Gokoolootsao signed a Receipt on the Will for the contents. This Will was dated 9th Shaban 1208 Hijree or A. D. 1793, witnessed by 51 persons, authenticated by the Seals of the Nuwab, Bukhshee, Mooftees, and other persons of Surat, countersigned by Mr. Griffiths as Chief, and registered in the Records by Mr. J. H. Cherry, Secretary, on the 30th March 1794.

A Royal Mandate issued on the application of Muharanee Buhoo, for confirmation of the above adoption. It was dated on the 7th Jumad oos Sanee of the 39th year of the Reign of the King Ubdool Moozuffur Julal ood Deen, Shah Alum, whose seal and signature it bore, and was also authenticated with the seals and signatures of Raja Mihtabkaee, and Raee Koonvur Singh, his servants, and of the Wuzeer Ubdool Munsoor Khan Sufdur Jung; it was duly registered likewise, in the offices of the Head Clerk of the Crown, and Royal Treasury, General Diary,

can, that after making every endeavor, but without effect, to prevail on the parties to refer it to the Arbitration of Brahmuns, he became Arbitrator himself in the cause in 1798, and the only thing which appears to have prevented his coming to a decision was the unsettled state of the times, and the probability that a disturbance would ensue from the great interest excited all over India respecting it, particularly among the followers of Vishnoo. Before this, in 1797, Respondent had skill enough by sitting in Dhurna or Dunning by threatening to starve himself, to get installed in the Temple, which he had since held. In 1801, the case was referred from the Government of Bombay for decision in the usual way by the Court of Udalut then just established at Surat.

Appellant pleaded generally, after referring the Court to the Records for the proceedings of Mr. Duncan and before his time, and to the above Genealogical Table, that Respondent, being descended from quite a different branch of the family, had no right or Title to the Idol, which ought to revert to his Line out of which it originally went into that of Govurdhun, and prayed it might be restored accordingly.

Respondent answered that Muharanee Buhoo Muharaj enjoyed possession of the Idol, and profits of the worship of it, during 58 years after death of her Husband, Govurdhunjee Maharaj, without the slightest opposition being made by any of her relations, and that she had adopted him Respondent, 8 years before her death, which happened a year and half ago, making over to him the Idol and every thing connected with its worship. The adoption was sanctioned, not only by Law, he being her relation, but confirmed by the Moghul Government of Surat under the seals and signatures of the late Nuwab Meer Nizam ood Deen Khan, of the Bukhshee, and Officers of Government, and by the Chief, Mr. Griffiths, on the part of the Honorable Company, as Governors of the Castle and Admirals of the Fleet.

Appellant

Appellant admitted that Muharanee Buhoo held the Priesthood for 52 years, and was not molested until she adopted a stranger for her Heir. He said Respondent's adoption was illegal by the Rules of Cast, and as to the order of the Nuwab, it was not passed, like a Decree, in presence of both parties; and that no such decision could have been given, since it was always held out to him by the Government of Bombay and by the Chief, that Muharanee Buhoo must be allowed to hold it during her life, and the dispute might afterwards be settled at Dwarka.

Respondent in rejoinder said the Idol in dispute was given, on refusal of it originally by Wittulnath's sixth Son, to the Eldest Son, Girdhurjee, from whom he was descended, and not to the third, and that it was borrowed from Girdhurjee by Balkrishna, and never returned. For this he quoted the Book Bhaka. He said too that Brij Raee's title for which he got the Royal Firman from Alum Geer, was that of his adoption by Girdhurlal, Son of Diwarikeshur, after the death of his Son, Jankee Buhoo's husband, Dwarkanath, without issue.

The evidence on both sides was only Documentary, Appellant exhibiting a Mehuzur, or certificate, from Diwarka dated Sunday 14th Shravun Vud A. S. 1857, or A. D. 1801, and signed by all the principal priests and Gosaeens of the Family there, and by Respondent's Father as the fourth among them, giving their opinion that the Idol having been forcibly taken by Brij Raee at the command of Alum Geer from the rightful Heir and possessor, Brij Bhookun, it ought in default of issue of the line into which it had passed, to revert to the descendants of the line from which it was taken, in preference to a member of another Family, since, in all its change of possessors it had ever been attended by one of the descendants of Balkrishna till Respondent got it, and it should be restored by him.

A Letter without date from Respondent's Father Govind Raee to him, prohibiting Respondent from becoming a candidate for the adoption, and requiring and commanding him under pain of

his

Diary, Moostufee, Sooba, and General, Record Offices, and the Office of Secretary of State. The Royal command of his Majesty was thereby issued to all the Royal Children, Secretaries of State, Nobles of the Court, Governors, Koomashdars, Officers of the Civil Court and others, that his Majesty had been pleased to ratify the adoption, by Muharanee Buhoo, of Gokoolootsao as her Son and Heir to all her property, and ordered accordingly, that every assistance should be given by them to the said Gokoolootsao and no one be allowed to molest him.

A Deed from Govind Rao Gacekowar Soobedar, agreeing to the adoption since it had been confirmed by the English authorities at Surat and by the Nuwab.

A letter addressed by Shah Alum to Gokoolootsao at the request of Muharanee Buhoo complimenting him on his accession to the Gadee.

A letter from the Honorable Sir John Shore, Governor General of India, to Muharanee Buhoo acknowledging receipt of one from her with information of his Imperial Majesty having confirmed the adoption of Gokoolootsao.

The Court having recorded all these Documents, put the following Questions to its Shastrees.

If a person make over any thing to his Cousin in Gift, yielding up his claim on it for ever by passing a general Release, has any one of the Family of the Writer of such Release, in the event of the Cousin dying without Male Issue, any right or Pretence to the thing so given? Question First.

The thing which has been made over to the cousin by such general release, is the property of the cousin, or person to whom it is so made over, but in the event of his leaving no male issue, it then goes to the nearest of kin to the original stock, if found Answer First.

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in the family of the first possessor, as he has the prior right otherwise to the opposite branch. (1)

Question Second. Is it lawful for a married woman to adopt any one as her son without her husband's permission?

Answer Second. The married woman can with permission of her husband, adopt any one as her own, and her husband's Son, But it is not lawful for her to do so without the permission of her husband. (2)

Question Third. Is it lawful for a widow to adopt any one as her Son?

Answer Third. The widow is permitted by the Shastr to adopt any one as her Son.

The case laid over from this time, A. D. 1803, in consequence of an apprehended disturbance, if a decision were passed in favor of either party, by the partizans of the other, until August 1813, when the Judge, Mr. Bourchier, called on the suit, but the absence of the parties prevented his coming to a decision.

In February 1814 Mr. Keate, then Judge, finding the parties

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(1) That is to Brij Bhookun's family, by the law quoted in case No. 37 (The wife and the daughters also &c.) the relationship between Brij Raee and Brij Bhookun being gentile. Gentiles are in the Mit. Book second, leaf 58th. page 2d, line 10th, declared to include both Supindas and Summanodukus, the first being the paternal grandmother, paternal Grandfather, *uncles* and *their sons* in succession, and on failure of them the paternal great Grandmother and great Grandfather and their issue; the second, or Sumanodukus, seven degrees further removed. As the Muyookhu in opposition to the Mitakshura declares the father of a man dying without male issue worthy to succeed before the mother, so in this case, of gentile relations, the Muyookhu differs from it, placing them in this order, 1st the paternal grandmother, 2d the Sister, 3d the paternal grandfather and the brother, of the half blood as equally near of Kin, 4th the paternal great grandfather, the paternal uncle, and the son of a brother of the half blood, sharing together as in the same degree of affinity. Cole. Mit. 350-51. vide Zilla Shastree's Vyuvustha in Case No. 58.

(2) Dayu Vibhagu of the Muyookhu, a saying of Vusishtu, "Man produced from Virile "seed and uterine blood, proceeds from his father and his mother as an effect from it's "cause. Therefore both his father and mother have power to give, to sell, or to abandon "their son. Let not an only son however be given away in adoption, neither let him be "received, for that very son saves his own ancestors. Nor again let a woman give away a "son, nor yet receive one, unless with the assent of her husband." The first part of this passage is given because it applies to the eighth answer.

ties were present by their Wukeels, and the case quite prepared with all the necessary documents, called it on for final decision.

The Court held upon this case that no cognizance could be taken of the legality of the transfer of the Idol from Brij Bhookun to Brij Raee, since it was the act of the reigning Monarch, and there was in evidence an Instrument executed by the parties concerned resigning all claim and title to the possession of the said Idol; nor was there any question of the validity of the subsequent assignments of the same Idol from Brij Raee to Poorshotum another Member of the same Branch of the Family, the Fourth, and again to Poorshotum of the Fifth Branch, instead of its reverting (as now claimed) to a Senior, or third, Branch.

From the last Poorshotum it fell by inheritance to his Son Govurdhun, and at his demise, he dying childless, it fell to his Widow. The question was thus limited to the simple case, whether or not the Widow had of right a discretion of adopting an Heir, of her own choice. The release or assignment, by Gunga the Daughter of Dwarkeshwur, and Jankee Buhoo wife of Dwarkanath, both of the Elder Branch, in favor of Brij Raee, of the Fourth, to the prejudice of the lineal Heirs of the Third, afforded a precedent, both of the Right of possession vesting in Females, and also of the power of transfer of the Idol out of the line of regular Descent.

The third answer of the Shastrees affirmed in general terms, the power of adoption by a Widow, as consonant to the law of the Shastr. The act of adoption, as well as the choice of the adopted Heir obtained the approbation of His Imperial Majesty Shah Alum, the Instrument itself being ratified by the Nuwab of Surat, and, for as much as these things took place in or about the year 1794, of the Christian Æra, the former authority at least was entitled to respect from the Court. The Mehzurs or Certificates produced from Dwarkanath and Poona, were doubtless entitled to consideration, but they were

were not legally in evidence before the Court, and it would be a gratuitous surrender of our Jurisdiction to be guided by such Extra Judicial Decisions, by what means obtained it could not be known. It was however observable that their object seemed chiefly to be, the replacing of the Image in charge of that Branch of the Family from which it was originally removed in the Reign of Ourung Zeb. Considering all the circumstances of this case, and that Muharanee was a Widow who had been in possession of the Idol during 50 years, after the death of her Husband, who died young and childless leaving no near of kin, he being in the fifth degree of descent from the common ancestor, and Appellant only in the eighth, the Deed of adoption must be considered valid, and it was confirmed accordingly, Appellant being nonsuited with Costs Rupees 5,042-0-00

Decree 1st Feb. 1814.

Court of Appeal,
G. L. Prendergast, *Chief Judge.*
T. M. Keate, *2d do.*
J. Sutherland, *3d do.*

After all the pleadings had been gone through in the Appeal in the Provincial Court, and those of the lower Court recorded, the Judges proceeded, with the Assistance of their Shastrees, to ascertain the degree of consanguinity of the parties respectively to Muharanee's Husband, Govurdhunjee. The Shastrees proposed, that as neither were within the seventh Degree, it should be traced to the common ancestor of Govurdhunjee, but the Judges, not considering this question of consanguinity to be Material to the first point to be tried, the validity of the adoption, agreed to assume, until this point had been disposed of, that Appellant would be the rightful Heir to the possession of the Idol Balkrishna, had the Widow died without making any will or adoption. This was done in consequence of Respondent claiming right, as next of kin, as well as by adoption, to the Idol.

Question First.

Then the Court referred to their Law Officers, the Question, whether a Hindoo Widow, without a written permission of her Husband at the approach of his Death, if so desirous could adopt a Son agreeably to the ordinances of the Dhurm Shastr, or to the Custom of the Country?

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Answer First.

The Shastrees said, a Widow, notwithstanding she has no written permission from her husband, may, if she be desirous of adopting a Son, do so legally by obtaining the Sanction of the Cast, and informing the Ruling authorities. This Law is written in the Muyookh and corresponds with the custom of the country. (3)

Question Second.

Since it had not appeared that Muharanee Buhoo obtained permission of the Cast, the Court asked the Pundits, whether a Widow had the power to adopt a Son without permission of the Cast?

Answer Second.

They replied, it is laid down in the Muyookh, that a Widow ought, in adopting a Son, to obtain consent of the Cast.

Question Third.

The Court then called on them to say whether in the event of a Widow having obtained the necessary permission to adopt a Son, she ought according to the Shastr to adopt the nearest of kin?

Answer Third.

The Pundits said It is written in the Muyookh, that it is necessary that the person to be adopted be of a virtuous disposition, learned, beloved by him who adopts him, and also, be the nearest of kin to him, (4) adding verbally, that if there were two

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(3) A passage subsequent to those above quoted (in the last note) from the Muyooku says, "Then if there must be an order, it is for a married woman only, as above shewn; since a "widow who has no husband only requires the permission of the Cast, by this saying of "Yagnywulkyu, let the cast protect a woman if her friends do not exist."

(4) Munoo, Chap 9th, Verse 168th, As translated, not by Sir William Jones, but by Mr. Colebrooke in his Mit. "He is called Duttrima, a son given "or adopted" whom his "father or mother affectionately gives as a son, being alike by class, and in a time of dis-"tress, confirming the Gift with water." Koollooku Bhuttu, the commentator on Munoo, referring to the saying of Vusishtha, quoted in the above note (2) thus explains the text. "Let "him be denominated Duttrima, whom his mother or father by mutual command shall "give to the adoptor, of similar cast, unfortunate by reason of his having no son, affection-"ately, that is not given from fear or other impulse, and with previous taking of water."

The Muyookhu, taking up the same verse of Munoo thus analizes it. "The disjunctive "or" means if the mother be not present, the father alone may give him away, and if the "father be dead the mother the same, but if both be alive, then even both," thus says Mudunu. The word unfortunate, shews that "the son of" one not in distress, for maintenance of his offspring, must not be given.—Viny aneshwur" in his Mitakshura says "this "prohibition regards the giver only;" but it is not so—And again Medhatithi says *alike* mean

"*nots*

two persons equally near, Muharance would be at liberty to adopt either.

Question Fourth. To solve the doubts which the Law seemed to throw upon the legality of this adoption, the Court asked In the event of a Widow having adopted a Son who is more than seven degrees removed, but whose adoption was performed according to the ceremonies of the Vedus and Shastr, may such an adoption be set aside by another person, also more than seven degrees removed in relationship from the Widow, claiming to be of nearer kin than the adopted Son?

Answer Fourth. They thus stated the Law of the Shastr, That which is done in conformity to the ordinance of the Vedus and Shastr, never can be annulled. Adoption, therefore, performed according to the Vedu, cannot be set aside, should the person opposing it be ever so near a kin to the adoptor. (5)

Respondent having explained to the Court, that no Members of the Cast being in Surat at the time of the adoption, the Cast's sanction could not be obtained thereto, the Court asked the

Question Fifth. Pundits, At the time of an adoption, as in the present case, none of the Cast, except those of the Household were present in the place, and permission of the Cast beyond the place was not obtained. Is such an adoption valid?

Answer Fifth. They answered, it is necessary that a Woman should obtain permission of the Cast, unless those whose permission is required be in a distant land, in which case she may perform any religious

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" *not by tribe (or Cast) but by qualities suitable to the family*; but Koolooku Bhuttu says it " means *equal in Cast*, and this is correct; for Yagnyuwulkyu, after enumerating the twelve " sorts of sons says" (as quoted in the Mitakshura, Book second, leaf 55th, page 1st, line 5th, Cole. Mit. 320) " This law is propounded by me in regard to sons equal by class" The Mayookhu goes on to say " affectionately" means possessed of the affection of his father " and mother; and further on" Let the adoption of a son by Brahmuns be made from " among their Supinda, or if there be none so nearly related then from the Usupinda. " But from other than these two degrees, he must not be taken." Vide Cole. Mit. pages 307 ad. 310 and the notes to them, and Cole. Dig. 3d 241-2.

(5) " That which has been done agreeably to the Vedus, cannot by an hundred denials be undone," a saying quoted by the Sudur Udalut Shastrees in Surat Cases No. 14.

ous act whatever. For instance, the power of performing religious Rites in a Family rests with the Elder Brother; but in the event of his going into a foreign country, his Younger Brother may perform them without his permission. (6) So, an elderly woman is allowed to perform religious duties without permission.

Appellant with permission of the Court submitted the following Question to the Pundits. Can a Hindoo Widow without written permission from her husband, or consent of the Cast adopt for a Son, a man 45 years of age, married, and having a family, who is desirous of being adopted, but in opposition to the most solemn prohibition and imprecation in writing of his own Father against his interfering with the Widow's Family? Question Sixth.

They replied, in the commencement of the Shastr it is written, a Woman who has lost her husband must obtain the sanction of her Father previous to adopting a Son, and if she have no Father, then that of the Cast. Again it is written, that a Woman who has reached years of discretion may of herself perform religious duties. So, she may adopt a Son without permission, if none of the Cast are at the time to be found. (7) It is also stated that a Boy under five years of age should be adopted, in order that he may be brought up in the religious tenets of his adoptive Father. This relates to cases where no relationship subsists, (8) but when Answer Sixth.

(6) Vide Note to Case No. 31.

(7) The Muyookhu on the subject of adoption by widows, says "Katyayunu also declares, if a woman without the orders of her father, husband, or son, should perform obsequies, such obsequies are of doubtful validity." "What is here said of the orders of her father, husband &c. relates only to the difference of age. Obsequies here mean, acts performed for a person deceased; wherefore, at whatever age a married woman may receive the command of her husband, that very command is in the case of a widow not required, for the command of any other person, not here mentioned, is no where declared requisite. Therefore the power of adoption" (as of a religious rite?) "without the order of her late husband, does pertain to a widow."

(8) Kalika Pooranu, quoted in the same leaf of the Muyookhu, "But after their fifth year, O'king, sons given and the other ten kinds of sons must not be taken. Let the adoptor take a boy five years old, and first perform a sacrifice for male offspring" (Cole Dig. 3d 149.) "This relates to Usugotrus only" says the Muyookhu, and this is true, for the reason of adopting one of a tender age is to have him brought up in the adoptor's own tenets, in which point one of the same family "Sugotru" would be qualified at any age. Vide Poona Shastree's first answer, at the end of Surat Cases No. 14.

when a Relation is to be adopted, no obtacle exists on account of his being of mature age, married, and having a family provided he possess common ability, and is beloved by the person who adopts him. (9) However, if the Father of the person to be adopted be seriously averse to it, declaring that his son shall not be given in adoption, the ceremony cannot be performed, since the Shastr ordains that the free consent of the Father is necessary to the adoption of his son by another person. (10)

Question Seventh. Appellant further asked, Whether adoption of a Son by a Widow of mature age, without consent of the Cast would contitute the person a Duttu Pootr, or would be only a Holy Act of Charity or Dhurm?

Answer Seventh. They answered if an elderly Woman in her Widowhood take a Son in adoption, provided all the Rites enjoined by the Vedus are performed at the time; for by performance of them the act of adoption is legalized, and the person so adopted becomes lawful heir to all the property of the person adopting him, equally and in the same manner as a legitimate born Son is lawful heir to the property of his Parents. (11) He cannot be considered in the light of a Pious and worthy man receiving alms, but as a Legitimate Son succeeding to all the property, in quality of Lawful Heir.

Question Eighth. Finally Appellant demanded, whether the following points were not laid down in the Roog Vedu, Punch Kastik, and other Books on the subject of adoption. That " man is born " from

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(9) The author of the Muyookhu says " My father, Sunkuru Bhuttu, has thus said, a " married man, even one who has raised a son, may become an adopted son; this is correct " and is not in opposition to other maxims."

(10) A son who allows himself to be adopted against his father's consent, is more properly a Swuyunduttu, or self given son, which with other nine of the twelve kinds of sons are forbidden in this age of the world, than a Duttu Pootru.

(11) Mit. Book the second, Dayu Vibhagu, leaf 54th, page 1st, line 14th, " Of these " twelve sons above mentioned, on failure of the first respectively, the second, in order as " enumerated, must be considered to be the giver of the funeral oblation, or performer of " obsequies, and taker of a share, or successor to the effects." Cole. Mit. 314.

" from the Seed of his Father and Blood of his Mother, and " so, being part of them, they have the power of selling or " making him over to any one, or of turning him out of doors." " That if a man have but one Son, he cannot make him over " to another, but if he have two, may make over one of them." " That he who takes such a Son must maintain him." " A " Woman cannot give away a Son, nor take another in " adoption, without the order or consent of her husband, and " that in the event of her having received no order, she must " send for her relations, inform them of her intention of adopt- " ing a Son, and after acquainting the Ruling authorities, " may adopt a Son according to the ceremonies laid down in " the Vedus?"

Answer Eighth.

The Shastrees said, these points are correctly stated, but the explanations of them from the Shastr have been fully stated in our former answers.

Question Ninth.

Respondent then begged to ask, whether by the Shastr, a Woman ought on all occasions to obtain consent of her husband for adopting a Son? putting a case, whether a young Woman, left a Widow at the age of 14 by her husband dying young, about the age of 17, in a far country, could on her attaining old age, adopt a Son without written permission from her husband?

Answer Ninth.

The answer said A married Woman (Suobhagyuvutee) should be obedient to the orders of her husband. In her Widowhood she should be under the direction of others to prevent her going astray. (12) Yet an Elderly Widow is allowed of her own accord to do that which will insure her happiness in the next

(12) Munoo Ch. 9th, Verse 3d, speaking of women, says " Their fathers protect them in " Childhood; their husbands protect them in youth; their sons protect in age. A woman " is never fit for independence" Vide also Surat Case No. 86, " Let a female be taken " care of &c." In the Mit. Book first, leaf 12th, page 1st, line 6th, it is declared " In de- " fault of both the Pukshu or families (of her husband and father) the Prince is both Lord " and husband of a lone woman."

next world, and as adopting a Son is one means of attaining it, she may adopt a Son.

Appellant having followed up his Question upon the distinction between Dut and Dhurm, by an assertion that Erasure of the latter word had been made in the original Deed of adoption before the Court, and the former inserted in its place, since in his copy, authenticated by the Udalut, Dhurm Pootr was written, the Court minutely examined the original, and found that no alteration or Erasure appeared in the original Deed, in which the words stood Dut Pootr, though the Appellant's copy, and that handed up in the Zilla Proceedings both ran Dhurm Pootr.

Question Tenth. The Court however asked the Pundits Whether there was any difference between the words Dut Pootr and Dhurm Pootr?

Answer Tenth. They replied, The expressions signify the same thing, Dhurm Pootr being the difinition of Dut Pootr. If a man has no legitimate Son, Owrus Pootr, the Law permits him to procure one in eleven different ways, and any one of these eleven becomes a Dhurm Pootr, or more correctly Dut Pootr. Women in the Mitakshura, are called Dhurm Putnee. But a woman is never given in adoption, and the expression Dhurm Putnee must therefore relate to married women, since the same Book says "Owrus Pootr, or a Legitimate son is he who is born of a Dhurm Putnee, or a Lawful wife." Therefore there is no difference between the two expressions. (13)

Appellant

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(13) The laws of Munoo ch. 9th, v. 158—59 and 60 specify twelve Poottrus, or sons, "six "being kinsmen and heirs, six kinsmen, but not heirs to collaterals."

1st—Owrusu, one born of a Dhurmu Putnee or lawful wife. "*Owroso dhurmu putneeju.*"

2nd—Kshetruju, one obtained for performance of his funeral ceremonies by an old, or infirm, man, from his wife by one of his own relations. *Kshetruju* produce of seed sown in another man's field.

3rd—Duttu, given in adoption with his own Father's and Mother's consent, lawfully given after the performance of the Julu Sunkulpu, permission given whilst holding water in the hands.

4th—Krutrimu, a son made, or chosen from fancy.

5th—Goodhotpunu, Bastard son of a married woman, whose father is not known.

6th—Upuvidhu, a Foundling, one brought up by another after being turned out of doors by his own parents.

7th

Appellant having formerly alleged that there were many of the Cast in Surat at the time of the adoption whose consent might therefore have been obtained, was called upon for proof of this. His witnesses gave in evidence that there were 5 persons in Surat at a particular time, by proving that they paid certain honors in A. S. 1850 to Gopal Laljee, one of the Family, by giving him a Bath prepared with Saffron, and making handsome presents, but these persons could not speak to the adoption.

Mr. Prendergast, *Chief Judge.*

The Chief Judge in his minute on the case observed, it does not turn on the legality of the adoption; if it did I should pronounce that act of adoption defective in itself. Neither does it depend upon which of the parties are the nearest of kin; if it did, I should pronounce the Appellant the next of kin, and Heir at law to the possession of the Idol. But the act and Deed of adoption, and Gift or Bequest by the Muharanee Buhoojee to Gokoolootsaojee is sanctioned and confirmed by the Established Government of the country, which was absolute, and restrained by no Law. This Deed of adoption is established not only by the local Government, but by the sanction and confirmation of every power who could be supposed to have even a semblance of right to bestow any sanction upon it: viz. of the Chief of Surat, in whom were vested the exercise of the rights that devolved to the Company as Governors of the Castle, or Commanders of the Fleet at Surat, and of the Emperor of Dehlee by his Firman. The Court of Appeal therefore cannot do otherwise than affirm the Zilla Judge's Decree.

Minute of Mr. Keate, *2d Judge.*

The second Judge continued of the same opinion in favor of Respondent

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7th—Kaneenu, bastard properly, son of an unmarried girl or Kunya.

8th—Suhoduju, a son, conceived by an unmarried girl before wedlock, but born after his mother's marriage.

9th—Kreetu, bought by a person for performance of the purchaser's obsequies.

10th—Pounurbhow, Issue of a second marriage by a woman after dissolution of her first marriage, whether by divorce, or death of her husband.

11th—Swuyundultu, a son self given who has lost, or left, his own parents.

12th—Parushow, the son of a Brahmun by a Soodra woman.

Respondent as when he passed the original decree in quality of Judge of the Zilla Court.

Minute of Mr. Sutherland, 3d Judge.

The third Judge, after giving a History of the case as set forth in the commencement of this Report, observed, the Appellant founded his Appeal on the grounds of the adoption being contrary to law, and as such, could not in any wise be made valid by the acts of the local Government, or the Firman of His Majesty of Dehlee. After admitting, to save litigation of an immaterial point, Appellant's assumed right, as Heir at Law, to question the alienation, the next point the Court had to ascertain was whether Muharanee Buhoojee could legally adopt a Son without her husband's consent, which was done by reference to the Shastrees, who laid it down, that she could, having obtained the permission of the Cast, and acquainted the Ruling power, but without such consent, an adoption was illegal. Respondent had stated thereupon, that there were none of the Cast in Surat at the time, and the Shastrees said, that if the members of the Cast were in distant parts, the Widow was at liberty to exercise her own will and discretion in performance of any religious act. The evidence adduced by Appellants only went so far as to say that 5 persons of the Cast were in Surat at the particular time, but did not touch upon the point, whether their consent was obtained, or asked, or that they protested against the measure, so that there was nothing to prove that Muharanee Buhoo did not act in a legal manner in this point. And there was no doubt of the ruling authorities having given their consent, as their seals and signatures were on the Deed. The third point, whether supposing the Muharanee had the necessary permission of the Cast, &c. the next of kin alone could by the Law of the Dhurm Shastr, be legally adopted, was determined by the Shastrees in the affirmative, adding that if there were two persons equally near, she might adopt either. Now as Appellant's assumption of the right as next of kin, was only granted to prevent litigation at the outset on a point not considered of material consequence, it was not ascertained whether

ther Muharanee had acted legally in this respect in making her choice. But this did not invalidate the adoption, since from the answer of the Shastrees it appeared, after the ceremonies prescribed by the Vedus and Shastr have been performed, the adoption cannot be set aside from any want of formality or other cause. On the fourth point, whether permission of the Father of the person to be adopted was not essentially necessary, and whether adoption could take place when forbidden in the strongest terms by the father, the Shastrees said the previous consent of the father was necessary, but Appellant had failed to follow this up by further proof, of the alleged writing of the father exhibited by Appellant, which was not clearly proved. But this did not signify, since it was laid down that an adoption once performed agreeably to the ceremonies of the Vedu and Shastr could not be annulled. The fifth point related to the Deed of adoption, which was in every respect a good document, since the alleged erasure was of no real importance, for the two words meant one and the same thing, Dut Pootr meaning a particular form of adoption, and Dhurm Pootr any one of the other ten. Having thus considered the adoption as fully established, and agreeable to law, without reference to the support given to the same by the governing powers in Surat, and the subsequent act of his Imperial Majesty of Dehlee, the Third Judge proceeded to deliver his opinion on the two last points. The act of adoption had the sanction of the Nuwab of Surat and his officers on the part of the Moghul Government, and of the English chief of Surat on the part of the British. It would not be in our power to set aside a Deed like this, as had the Muharanee Buhoo died the day preceding that on which she passed the Deed in question, the right of Gokoolootsaojee would have been recognized and fully established, and this Deed would have been supported by the respective Governments which became parties to the passing of it, for such an official act was to all intents and purposes binding during the Moghul Government, more especially as the Imperial Decree confirmed and approved

of

of the proceeding. The third Judge was of opinion that the Decree ought to be in conformity to this Royal order, considering it to be a competent authority agreeably to the provisions of Section 15th Regulation 1st A. D. 1800.

The Court of Appeal decreed that although the whole of the conditions prescribed by the Vedus and Shastr for the adoption of a Son had not been satisfied on the case of Gokoolootsaojee, yet as many of the omissions appeared to have been involuntary and unavoidable, and as it had not been made to appear how an adoption completed with the ceremonies read and performed as laid down in the Vedus and Shastr and afterwards confirmed by the Local authorities of the Nuwab and English Chief at Surat, and finally ratified by the Emperor of Dehlee can be set aside, the Decree of the Zillah Judge was affirmed with Costs in both Courts to be borne by Appellant.

Decree 23d April 1816.

Sudur Udalut
Sir E. Nèpean
President.
M. Nightingall
A. Bell,
Decree 5th
Nov. 1817.

The Court, having laid the opinions of the Pundits, of the Zilla Court, and those delivered by the Pundits of the Provincial Court, separately before their Law Officer, demanded his opinion of their being according to the Shastr, or not? He stated clearly that they were perfectly correct and conformable to the Shastr, and the Court having carefully examined the Proceedings held in the lower Courts, fully affirmed their decisions, as founded upon a minute and able investigaton of this intricate and important case.

N°. 44.

Mt. JIOOKOONWUR Widow of DEOCHUND.Appellant,

VERSUS

Mt. JHUNKOO, Widow of JYCHUND.....Respondent.

Surat Udalut,
J. Romér,
Judge.

Claim by Respondent to recover from Appellant the balance unpaid of a Legacy

THIS Petition was filed by Respondent on the 25th July 1815, to recover from Appellant the sum of Rupees 1,553, due as follows. Respondent became a widow when very young, and

and from that time resided with her Maternal Uncle Bhaeechund, and after his death with his Son Deochund, whom, being at his Father's death a child of 10 years old, she brought up, living always in the house with him. Deochund a few days before his own death drew up a memorandum, duly signed and witnessed, of the sums he wished to be distributed in alms, and of the Legacies (Sookhree) to be paid to Respondent, and to his own Goomashtas, the amount of Respondent's Legacy being Rupees 1,500. After his death, Appellant his wife, and Wurdhman her Father, confirmed the memorandum, by bringing all the Items in it, including Respondent's Legacy, to account upon the Books of the House through Munch,haram, the Goomashta, which fact witnesses were ready to prove. Respondent said she had received Rupees 177 of the amount, but could not get from Appellant the balance Rupees 1,323 and was obliged to sue her for that sum, which with interest Rupees 230, made the whole amount claimed.

left her by Appellant's late husband in his Will. Decrees in favor of Respondent, and of the other Legatees in other suits, on proof of Appellant's having acknowledged & acted on the Will by part payment of these Legacies.

Appellant declared the alleged memorandum was a Forgery, made by Respondent with Munchharam and three other Goomashtas for their own benefit, as no such paper was ever executed by her husband during his life, and she referred to former decisions respecting others of these Legacies in support of her denial of the paper.

Munohur Nana Bhaee deposed that he was in the habit of visiting Deochund, who sent for him 11 days before his death, and in presence of the parties, and one Moolukchund, told him that of his property worth about Rupees 23,000, he desired Rupees 7,000 might be spent in alms; Rupees 1,500 each be paid to three of his Goomashtas; Rupees 100 to a fourth; and Rupees 300 to a fifth; with Rupees 1,500 to Respondent, and that half of his late wife's ornaments, value Rupees 3,500, should be given to Appellant, the other half being distributed in alms. Witness at his desire wrote a memorandum to this effect, at the conclusion of which the deceased with his

own

own hand wrote " This writing is true, I will observe " it religiously." Nana Bhaee and Moolukchund were the witnesses to this Document, which deponent kept for three days after Deochund's death, and then gave it up to Appellant for the purpose of having the contents entered in the Books, after which he received it back from Wurdhman her Father. Witness saw Rupees 50 paid by Wurdhman to three of the Goomashtas afterwards, and Rupees 25 to a fourth, which payments were entered in the Books. Rupees 225 were entered in witness's name in the Books by Wurdhman, who sent him a gold ornament, but he declined receiving it and returned it.

The memorandum, exhibited in Court by this witness, was dated 10th Shravun Sood A. S. 1869 or 6th August 1813, exactly to the effect he had stated, and constituting him executor in these concluding words " the execution rests with Munohur."

Two other persons proved production of this memorandum, by the first witness, to Appellant and her Father, in the shop of the deceased, with acknowledgment and entry of its contents in the Books by Appellant and her Father; the hand writing of the deceased on the memorandum was sworn to by one of them.

The Judge, examining Appellant's account Book, found that Rupees 956 1 62½ were still due to Respondent, and decreed that Deochund did execute the said Memorandum, or Paper, in a testamentary form, during his life time; that Appellant and her Father after the death of Deochund confirmed and acted upon this paper, and caused its contents to be brought on the Books of the House, and that their present attempt to reverse their joint act from enmity to Respondent, could not be allowed. Therefore the sum of Rupees 956-1-62½ as shewn upon the Books, was decreed to Respondent, Appellant bearing Costs.

Decree 10th Feb. 1816.

Court of Appeal, G. L. Prendergast, *Chief Judge.* J. Sutherland, *2d do.*

This cause, with three others in which Jiookoonwur appealed against the claims of other Legatees decided against her in the Zilla

Zilla Court, were brought on at the same time for hearing, since the decision in all depended upon the will being valid or otherwise.

The Court called up Nana Bhaee Goolalchund, and Moolukchund Moteechund, the subscribing witnesses, when they both "recognized the Paper as that which Deochund caused Munohur to write on account of Shookree, Dhurm &c. bequeathed by "him, Deochund, who signed it in words to the effect "that he "would religiously keep the agreement he had thereby entered "into." They said it was not written in their presence but presented for their signatures before the parties by Deochund "himself, who was in full possession of his senses at the time, "though at other times flighty from the fever of which he died."

The Court held, that the Will of Deochund Bhaeechund was good, regularly executed, and declared by him to be his Will, in presence of two witnesses, wherefore the Zilla Judge's Decrees in the above four suits were affirmed with Costs.

Decree 10th August 1816.

This decision was also fully affirmed on a further appeal to the Sudur Udalut.

Sudur Udalut, Sir E. Nepean, *President.* M. Nightingall. A. Bell, Decree 13th Nov. 1817.

N°. 45.

DOST MOOHUMMUD bin MOOHUMMUD BHAEE,..... } *APPELLANT,*

VERSUS

HUSUN BHAEE WULEE BHAEE,.....RESPONDENT.

IT was filed by Appellant on the 8th March 1814, to recover from Respondent Rupees 5,000 value of Appellant's share of the Estate of his Grandfather Wulee Moohummud.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

His ancestors he said carried on business in the name of Nana Bhaee Moorar, the partners in which House in A. S. 1866, or A. D. 1810, were Respondent Husun Bhaee, and Brothers

Claim by Appellant for a share of his Grandfather's property. Thrown out on proof of

separation, and of a formal Release passed by Appellant.

Brothers Moohummud Bhaee (Appellant's Father) and Kureem Bhaee, the three Sons of Wulee Bhaee. Respondent Husun Bhaee had charge of the Books and Effects of the House, and in A. S. 1861, or A. D. 1805, Appellant and his Brother Jumal separated themselves from the House, but without receiving their shares of the property. As Respondent refused to give them up, Appellant now sued for his own share, which he prayed might be caused to be given up to him by Respondent.

It was in answer pleaded that a general division had taken place of the property of the House, after settlement of their affairs, and that Appellant having received his share had passed a Release to him for it, and had no claim whatever against him.

Appellant flatly denied having passed any release whatever, upon which Respondent exhibited a Release dated 5th Chytur Vud A. S. 1861 or April 1805, written by Jumal, Dost Moohummud (Appellant) and Jetha, three sons of Moohummud Wulee Bhaee to Momna Dada Bhaee son of (Respondent) Husun Bhaee Wulee Moohummud Nana Bhaee Moorar, declaring that they had received from him their full shares of the property acquired by the House, after allowing Husun Bhaee deduction for what he had laid out on the Family Household, marriage, and Funeral Expenses up to the time of this separation, and had no further claim whatever upon him thereafter for any profits of the House, nor any part of the Estate.

Three out of four of the Witnesses to this Deed, appeared and proved it to have been duly executed before them by Appellant and his two Brothers in presence of the whole family, upon which the Court decided, that Appellant having been proved to have signed and passed to Respondent a Release for his share of his Grandfather's Estate, his present claim upon Respondent for it was null and void, and the suit was dismissed accordingly, he paying all Costs.

Decree 4th Dec. 1815.

Court of Appeal,

The Provincial Court observed upon this claim being appealed

ed to them, that besides the Farighkhut or Release being clearly proved, it appeared Appellant's Father had died twenty three years before, and the Appellant only filed his suit two years ago, after a lapse of 21 years, without assigning any reason for the delay. The Decree of the Assistant Judge was therefore at once affirmed with Costs, and the Sudur Udalut concurring in these Decisions, dismissed the appeal with Costs.

G. L. Prendergast, *Chief Judge.* J. Sutherland, *Third Judge.*

Decree 3d Aug. 1816. Sudur Udalut. Sir E. Nepean, *President.* M. Nightingall, A. Bell, Decree 6th Nov. 1817.

N°. 46.

Mt. RAJKOONWUR Widow and Mt. BUHINKOONWUR Daughter { *of Gungadas Huree Bhaee* } *APPELLANTS,*

VERSUS

Mt. DHUNKOONWUR; GOVURDHUN KASSEE; and WULUBH HUREE BHAEE..... } *RESPONDENTS.*

APPELLANT filed the suit in the Zilla Court on the 8th February 1814 to recover from Respondents the property of Gungadas of the value of about Rupees 25,000, consisting of Household Furniture, Cash, outstanding Debts, and amount of sundry Dealings entered in his account Books and bequeathed by him on his death bed in A. S. 1862, or A. D. 1806 to the charge of his mother Jumna, to be by her kept for the benefit of Appellants until their arriving at years of discretion, they being then 13 and 8 years of age, the Testator at the time declaring that the Estate and Effects had been earned by his own personal industry and no one but himself had a right or title to them. Appellants said Jumna kept the Effects in the room in which Gungadas had deposited them, in the same state till two years after, when she died making over this property to her daughter,

Surat Udalut. J. Romer, *Judge.*

Claim by Appellants, the Widow and daughter of a person deceased, to recover his estate from his Brother] and other relations.

Disputed on the plea that as the deceased had not separated from the Family, his Widow and daughter had no claim in law against the joint property.

Claim dismissed for want of proof of separation by Appellants

daughter, Respondent Dhunkoonwur, with the same charge as Gungadas gave her, to deliver it to Appellants when of age to receive it. Dhunkoonwur in A. S. 1871, or A. D. 1815, went on a pilgrimage, and gave up the Effects to Govurdhun Kassee, her son, who with Wulubh Huree Bhaee, Brother of Gungadas, had taken possession of them and refused to give them up. Appellants filed for Rupees 20,000, of the above value, stating in conclusion, that as Gungadas Huree Bhaee the deceased and his Brother Respondent Wulubh Huree Bhaee and Lukmeedas Huree Bhaee, used to live separate, the latter had no title or pretence to inherit the property of the deceased.

Respondents Dhunkoonwur and her son Govurdhun Kassee answered that the claim was totally false in every respect, and they denied delivery of any Effects whatever to them by Jumna Baee.

Respondent Wulubh Huree Bhaee said that he and his Brother Gungadas lived and ate together; their Estate was not divided, and no releases were ever executed between them. The Mercantile transactions of the House were to that very day carried on in the name of Gungadas Huree Bhaee, and Appellant had no right whatever to demand any thing but Food and Raiment allowance, and Lodging.

Appellants repeated their assertion that the Effects were given up for their use to Jumna Baee, and by her transferred to Respondent Dhunkoonwur (who had died since filing her answer) as they would prove, as well as the separation of the Brothers. Appellant urged also that debts in the name of Gungadas had been since recovered by Respondent Wulubhdas. Rajkoonwur alluded to the suit filed against her by Bhaee Shah Keshoor (vide Report No. 22). and asked why, if the Brothers were not separated, Respondent Wulubhdas had not come in to defend that suit, instead of allowing her to do so; she admitted clearly however that her present action was only for her late Husband's personal property and not for his paternal inheritance

heritance which he had not divided with Respondent, and for which she should accordingly sue him hereafter.

Respondent took notice of this admission as completely vitiating the claim against him, and with regard to Bhaee Shah Keshoor's suit, said it was a fictitious one, and Respondent himself furnished the Security for it; this was admitted by Appellant to be true.

The witnesses, of whom several were called, could none of them prove or speak to the property, though some of them said the Brothers traded separately, but all agreed that they lived and ate together, and the Luhana or mourning Presents made to the Cast on the death of Gungadas, were in the name of their Common ancestor Huree Bhaee, and that only one was given on similar occasions by the Cast to them, all jointly. Hureeram, Sreemalee Brahmun, the family Priest, deposed that since he succeeded to the office in this Family on the death of his own Father, when he was a Boy 12 years old, he had been in the daily habit of calling at the House for Alms, and said that Jumna the Mother of the Family, dressed the Victuals which the three Brothers always ate together. He did not know from what Funds they traded, Wulubhdas being a Ship Broker and the others Arab Brokers, but that Jumna kept the key of the room in which the grain and Cash were kept. Luhana, and invitations to Cast dinners were received by them jointly. Jumna and Respondent Wulubhdas jointly defrayed the Funeral expenses of Gungadas. The marriage expenses of Appellant, his daughter, and her Dowry were paid by Respondent. On examination, he said Rutunkoonwur Widow of Lukmeedas did not live with Respondent, and received separate Luhana, and that witness, received separate Alms from her. He said the name of the common Ancestor, Hureedas, was engraved on the Luhana Pots distributed to the Cast on the death of Gungadas. This evidence was corroborated by a relation of the parties, who, on examination by Appellant said there was

a fourth Son, who separated from the family during the life time of Hurcedas, who took a general release from him. The partner in trade of Lukmeedas Huree Bhaee deposed that after the latter's death in A. S. 1862, or A. D. 1806, his Widow Rutunkoonwur and Sons Kaseedas and Khooshal Bhaee continued the partnership up to the present time. Gungadas had dealings with their Firm, and left a Balance in his favor in account with them at his death. The Cash was kept formerly by Jumna, and since her death by Rutunkoonwur; said the three Brothers lived together, and he believed never divided their inheritance. He corroborated the evidence given by the Family priest as regarded the distribution of Luhana, and eating together.

Gopaldas Mookoondram said that he was a neighbour, and in habits of constant intercourse with the three Brothers, who, he knew never divided their patrimony, though they traded separately. The wealth of Lukmeedas came since his death into the hands of Rutunkoonwur his Widow, who lived and received Luhana separate from Wullubh, since the death of Jumna, but Appellant Rajkoonwur never received any Luhana at all. The three brothers received Luhana jointly, and that distributed on the death of Gungadas was in the name of his Father. Lukmeedas once told him that Gungadas had made a Will in favor of Appellants, his wife and Daughter, and had given his property in trust to Jumna for them, when they reached years of discretion.

Mankoonwur, mother-in-law of Gungadas, swore that when he was on his death bed, he declared to her and to Rajkoonwur's Father Kasheedas, that his mother would take care of Appellants, and that he afterwards gave the key of his room to his mother with directions to make the property over to his Widow and daughter when of proper age. One Ruseekdas since dead was the only other witness to this bequest.

Lulloo Bhaee, the son of Jumna's Sister Jankee proved that after

after the death of Hureedas his property remained with Jumna, and was never divided by the brothers.

After the evidence was gone through, the Judge asked the Law Officers this Question. Three Brothers whose father's Estate was not divided among them, lived and ate together with their mother, but traded separately, without its being now known if their funds were distinct or from the Joint stock. The property and Effects remained with the mother, and two of the Brothers died, one leaving a Widow and daughter by a former wife—the other, a widow and two Sons. Are these persons to be considered an undivided, or a divided, family, according to the Shastr? They answered, the three Brothers, and the descendants of two mentioned above, cannot be considered agreeably to the Shastr, as a divided family, because according to the Mitakshura and Muyookh the following acts must be performed separately to constitute a Division; first, Dressing of victuals; Second, Religious ceremonies; Third, The Shradh or annual funeral ceremonies; fourth, Houses, Lands &c. must be divided; fifth, Deeds of Partition should be executed. (1) Since none of the above described acts of Division have taken place in this case, the three Brothers, or the one surviving Brother

(1) Mit. Book second, conclusion of the Dayu Vibhagu, "Yagnyuwulkyu, 1st when "partition is denied, the fact of it may be ascertained by the evidence of Kinsmen, relatives, and witnesses, by written proof or by separate possession of house or field; 2d If "partition be denied (says the commentator) or disputed, the fact may be known and certainly be obtained, by the testimony of Kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described" (Vide Chapter on Evidence, and note, (3) to case No. 25) "or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house "or field. 3d The practise of agriculture or other business pursued apart from the rest, and "the observance of the "*five great Sacraments*" and other religious duties performed separately from them, are pronounced to be tokens of a partition, by this saying of Narudu, If "a question arise a mong coheirs in regard to the fact of partition, it must be ascertained by "the evidence of kinsmen, by the record of the distribution, or by separate transaction of "affairs. The religious duty of unseparated brethren is single. When partition has indeed "been made, religious duties become separate for each of them. 4th Other signs of "separation are specified by the same author, separated but not unseparated brethren, "may

Brother and the children of the other two deceased cannot be considered a divided family, but of one and the same.

The Judge however asked, as the widow and two Sons of Lukmeedas, one of the deceased Brothers, are in possession of his Effects and property, have they, or not, a right to the whole of his share? Again, Is Rajkoonwur, widow of the other Brother Gungadas deceased, permitted to take the share of her husband, she being childless? And, has Buhinjee, the daughter of Gungadas by a former wife, and who has a Son, a right to possess her Father's share? They replied, we have declared that the three Brothers were joint and not separate. The two Sons of Lukmeedas are permitted to possess the whole of their Father's share. As Gungadas died leaving no Son, and without having previously separated his share, his widow is not allowed to separate, and take her husband's share (2) nor has the daughter by a former wife any right to separate and take her Father's share, because Gungadas her Father died without previous separation and leaving no Son. This is the Doctrine of the Mitakshura.

The Judge observed, that Gungadas lived separately had not been proved, nor had it been established that he kept his earnings separate, nor that a Partition took place between the Brothers; therefore agreeably to the answers of the Shastrees it was decreed, that neither of the Appellants had any right to inherit the Effects and property of their respective husband and father Gungadas.

" may reciprocally bear testimony, become sureties, bestow Gifts and accept presents." Cole. Mit. last Section.

In the Dayu Vibhagu of the Muyookh also, the above texts, of Yagnyuwulkyu " When " partition &c." and that of Narudu. " If a question &c." are quoted, and further on one of Shakulu, " Residing with joint dressing of food, worship of a single God in the house, " and moreover one single sacrifice at meals to the Viswudevus, or Manes, shew unity. " In a family of divided brethren these acts are separate."

(2) Mit. Book second. leaf 56th, page 2nd, line 7th, " The text of Vusishtha" (that, an appointment by a wife to raise up a son for her husband by his brother must not be through covetousness) " *means that if the husband die either unseparated from his copartners* " *or reunited with them, she has not a right to the succession*, and therefore an appointment " to raise up issue must not be accepted for the sake of securing the succession to her " offspring." Cole. Mit. 331-2.

Gungadas. According to the Dhurm Shastr it was incumbent on Respondents to maintain them, but a Decree was not passed to that effect since they had not sued for a maintenance. Their claim to share was therefore dismissed with costs.

Decree 13th Sept. 1813.

Rajkoonwur represented in her Appeal to the Provincial Court that the evidence of Rutunkoonwur, and of Govurdhun Kassee, was material to her cause, but she was deprived of the benefit of the latter's testimony in the lower Court by her Wukeel making Govurdhun a party to the suit. She prayed therefore that the said Govurdhun might be now called as a Witness, as well as Rutunkoonwur, widow of Lukmeedas, personally, instead of her partner, who had before given evidence in the Zilla Court.

Court of Appeal, No. 453. G.L. Prender-gast, *Chief Judge.* J. Sutherland, *2d Ditto.*

Respondents urged that Govurdhun was a party to this suit, and Rutunkoonwur and her sons had a claim for division of property, and their evidence ought not to be admitted. The Court ruled that Govurdhun should not be called, but the testimony of Rutunkoonwur was admitted, and was to the effect that the three Brothers carried on business separately and kept their effects in their respective houses; no Farighkhutee was ever passed by the Brothers. The fourth Brother, Nundlal, separated because he was only half brother to the rest, not being born of the same Mother, This witness *supposed* the property of Gungadas was in Appellant's possession, but on cross examination said it was taken by Respondent when Shah Keshoor Kulyan filed his suit; did not know whether Respondent got her married to Lukmeedas. On examination by the Shastree, she said, the Punch Bhag (3) presented to the family priest, Hureeram, was given by only one of the Brothers when they

(3) The "Punch Bhag" of the common people is the Punch Muha Yugnyu" or "five "great sacraments" of the Brahmuns, the separate or joint performance of which is the test of separation, as declared in Note (1) The common ceremony consists in putting aside at each meal, five morsels for the Viswudevus, or manes, in atonement for the unwitting destruction of animal life in the five daily operations, of cooking, grinding, sweeping, pounding, and drinking. Vide Munoo, 3rd Verse, 67 ad. 74.

they lived together before the death of Jumna, and that the Shradh and Sumvutsuree performed annually to the Manes of Huree Bhaee were taken by each Brother in his turn. (1) Wullubhdas Govindas deposed that he witnessed a Paper at the time that Dhunkoonwur was sick of her last illness executed by both the Respondents in presence of two or three other persons, which Paper was in the hands of Govurdhun Bhaee.

Respondent explained that in consequence of the Zilla Judge's recommendation, he had executed a Paper to Appellants for a reputable maintenance, and this was the paper alluded to.

The Court of Appeal were of opinion on this case that no proof of Division of property had been adduced, and Appellant's claim was therefore further dismissed in Appeal with fresh Costs.

Decree 5th July 1816.

Sudur Udalut, Sir E. Nepean, *President.* M. Nightingall, A. Bell.

Decree 25th March 1818.

After the Court had consulted their Pundit upon the correctness of the two Vyuvusthas given in the Zilla Court, and ascertained from him that they were both perfectly correct and conformable to the Shastr, the Decision of the two lower Courts founded upon them, were affirmed with further Costs.

N°. 47.

LUKMEEDAS LALDAS.....*APPELLANT*,

VERSUS

KHOORSHEDJEE NOWSHIRWANJEE, trading under the Firm of..... JUMSHEDJEE GOOSHTUSPJEE,..... } *RESPONDENT*.

Surat Udalut, J. Romer, *Judge.*

THIS Suit was filed on the 11th April 1815 to recover from Respondent the sum of Rupees 5,145, due on two Policies of Insurance.

Appellant

(1) Vide Note to Case No. 31, and the words of Narudu in Note (I) of this case, "the "religious duty of unseparated brethren is single."

Suit filed to recover under two Policies of Insurance from Respondent.

Claim dismissed in consequence of Appellant's having effected the insurance to an amount far greater than the actual value of the ship and Cargo, and from other circumstances causing a suspicion of fraud on the part of Appellant.

Appellant set forth, that his Broker Lukmeedass Gokool Kulyan got Respondent to execute to him two Policies of Insurance in A. S. 1870 or A. D. 1814. This first Policy was for Rs. 7,500, upon two Voyages of the Ships Futteh Moobaruk, belonging to the Moolna, and of the Labhsuwaee, Appellant's own Vessel, half the amount, or Rupees 3,750 upon each. The second Policy was for Rupees 1,500 upon the Labhsuwaee alone for one Voyage. He said the Futteh Moobaruk performed her Voyages in safety but the Labhsuwaee being damaged on her return from Judda, he now claimed from Respondent the sums in which he had insured her under the two Policies, being Rupees 5,145 or 98 per Cent of their amount Rupees 5,250, by the Terms of the Insurance.

Respondent answered by referring to the Records of the Foujdaree Court, and Court of Session, for Proof which had been there given of a conspiracy between Appellant and one Meetha Meean, to defraud the Insurers of the Labhsuwaee. He said also, that he had insured the Cargo, and not the Block, and Appellant shipped no Cargo, nor were there any Goods on board except nine Bales of Piece Goods shipped by Meetha Meean in the name of his Brother Ibrahim. The Vessel brought no return Cargo whatever from Judda, and was sold at Makulla.

Appellant replied that Respondent had been duly paid the Premium upon the Policies, and was therefore liable for their Amount by the Custom of Merchants, and as to Goods being shipped or not, he had nothing to do with that, his Policies being on the Vessel. He intended hereafter to sue him for loss of character by being brought by him before the Criminal Court.

Respondent said the Act of Appellant and his accomplices was the most barefaced fraud ever committed in the City, and this had been proved as he had before said. They insured the vessel in Surat, Bhownugur, and Buroda for Rupees 110,340-2 though she had nothing on board but 9 Bales of Piece Goods,

as

as might be seen by the Custom House Books. The Crew all arrived safe in Surat with their Baggage, and as to the Custom of Merchants that was already established in his own favor by the evidence of twelve Merchants given before the Court of Circuit.

Appellant exhibited two Policies of Insurance, one dated the 10th Phalgoon Sood A. S. 1870 or 1st March 1814 as follows:

The whole of the Muhajuns write to the holders thus: we agree to insure to the amount of 7,500 Rupees on the undermentioned Ships.

7,500	On the Labhsuwaee, owner Kishundas Bhugwan, ...	Rupees 3,750-0-00
7,500	On the Futteh Moobaruk, owner Moolna Futteh, ...	Rupees 3,750-0-00
		Rupees 7,500-0-00

The risk to commence from the time the Vessels weigh anchor at the Bar of Surat, and to continue till their arrival at Judda, and again from the time of their weighing anchor at Judda till their arrival at Bombay Harbour, or at the Bar of Surat. If part or the whole of the Goods are thrown overboard, the underwriters are not answerable, and if the Ships are wrecked, and the Goods saved, they are to be divided by the underwriters according to their proportions. If there should be a loss, the underwriters are answerable at the rate of 98 per Cent. The other Policy was entered into by Respondent and Narayundas Gopaldas, each in Rupees 1,000, upon the Labhsuwaee, insuring her outward Bound to Judda and back again, on the same terms as the other Policy was effected at.

Respondent called the Supercargo and two of the Officers of the Labhsuwaee, who fully corroborated his statement that she sailed from Surat with nothing on board but nine Bales of Piece Goods, which the Supercargo said might be worth between

7,000

7,000 and 10,000 Rupees, and that she brought nothing whatever in return from Judda. They put into Makulla in returning because short of water and leaky. After lying there four days, the Crews were hauling her up for repair, when she struck and got fast aground. They were obliged to abandon her, and gave her up to the Hukeem of the place on condition of his furnishing them with a passage to Surat. The Supercargo added the Hukeem had imprisoned them for payment of 1,200 Dollars 1 | 3rd as his dues, the rest passage, and provision, money for the Crew to Surat, and they gave the vessel up to him to answer this demand.

Two Insurance Brokers proved that they had been induced to insure the Cargo of the Labhsuwaee respectively in Rupees 250 and Rupees 100 by Jugjeewun Gopal, but hearing a Report of unfair practices, went to him, and with him afterwards to Kulyan Dyal, (a party with Appellant in these transactions and prosecuted before the Court of Session) to have their names struck out of the Policies. He wished to put them off by saying if he were known to do such a thing it would create alarm. On their persisting however, he agreed to sign a Bond to each of them for the amount in which they had respectively insured, and did give them Bonds, which they were ready to produce.

Jugjeewun Gopal, the Broker, corroborated this evidence, adding that he spoke to Kulyan Dyal afterwards about cancelling the signatures of the rest of the underwriters, when the latter said, if such practices were discovered he could recover nothing from the underwriters, cautioning witness at the same time against mentioning to any one what he had already done, in cancelling the signatures of these two persons.

Respondent also called two underwriters of Surat who gave evidence, in answer to Respondent's Questions, as follows.

First.—If a person insures the Cargo of a Vessel, then, whether interest be charged or not, Goods must be shipped on that Vessel,

Vessel, before the underwriters can be made answerable for any loss.

Second.—If a person ship Goods of the Value of Rupees 5,000 and effect insurance to the amount of Rupees 50,000 or 75,000, the transaction is fraudulent.

Third.—The wording of Policies on the Block, and on the Cargo are different.

Fourth.—If a Ship insured in her Cargo for two Voyages sails with a small Cargoon board, and returning empty is taken to another Port and sold, the underwriters are not answerable.

To Questions from Appellant they replied.

Fifth.—That if a Ship return entirely empty from a trading Voyage, the underwriters will return the Premium provided here be no fraud.

Sixth.—That persons who have underwritten the Cargo of a missing ship at a Premium increased from the Common rate of 3 or 4 per Cent to 10 or 15 per Cent, are liable in the amount on her loss being ascertained, if there is no fraud.

Seventh.—And are also liable for the Block, when insured under the same circumstances.

The proceedings being here closed, the Judge summed up, and found, That Goods were not shipped upon the Labhsuwaeel to the amount of the Policies of Insurance. That the vesse, brought no Returns for her outward Cargo. That she was stranded near the Port of Makulla and there sold, the Crew arriving safe at Surat with all their Baggage, and under all these circumstances it was decreed that the underwriters were

Decree 28th Feb. 1816. nto answerable for the loss, agreeably to the Custom of Merchants at Surat, and Appellant's claim against Respondent was, therefore dismissed with Costs to be borne by him.

Courtof Appeal, The Provincial Court on the motion of Respondent in this cause,

G. L. Prendergast, *Chief Judge.* T. Keate, *2d do.* J. Sutherland, *3d. do.*

cause, brought on Record the proceedings of the Chief Judge at the first Sessions of Surat in 1815, on the Trial of Dosa Mecan Ubd Uhmud (Nakhuda or Commander) Kulyan Dyal; Ibrahim Ubd Uhmud, Meetha Meean Ubd Uhmud; Ubdool Hussun Ubdool Bagur; Keshow Ramjee; Jeevun Ramjee; Sooleeman Hajee; and Bhuwan, charged " with a con- " spiracy to defraud underwriters and Holders of Respondentia " on the Cargo and Hull of the Grab Ship Labhsuwaee, in " having insured both to a greater amount than their value, and " having also taken up large sums on Respondentia, and hav- " ing afterwards used unfair means to destroy or cast away the " said vessel."

On which charge the Judge remarked the following points to be material, first, What was the nature of the transactions which took place before the sailing of the Labhsuwaee; second, What was the nature of the Proceedings with respect to that Vessel from the time of her sailing from Surat Bar till her being lost at Makulla; third, Whether the previous transactions were of themselves of a nature sufficient to subject the parties to a criminal prosecution, independently of any after proceedings, and if not, what part of the after proceedings rendered them so. It was in evidence, and fully acknowledged, that the Labhuwaee was an old and weak Vessel, commonly called Kummur Toota or Broken Backed, and was unfit for the Mocha or Judda trade; she was notwithstanding taken up by the prisoners, and a small Cargo put on board, and Respondentia was taken up to much greater Amount than the value, and insurance was also effected. This was primâ facie evidence of intended fraud, or of a spirit of Wagering and Gambling between the Insurers and Insured, whether or not the Labhsuwaee would perform her Voyage. If she were lost, the Insured would win the Wager; if she returned safe the underwriters would win. Objectionable as such Wagerings were, they were very common in Surat, so that a Regulation or Law alone could render them Criminal. Though it might excite suspicion, it was not

not of itself sufficient proof of a previous intention to lose the Vessel. Proof of such previous intention, and of corresponding proceedings of the Crew were necessary.

It was also in evidence that the Labhsuwaee had struck upon the rocks between Mocha and Judda, but it was not pretended that it was intentional, and the evidence of passengers proved that the Crew worked hard, and did their duty trying afterwards to save the Vessel. The Prisoner Ubdool Hussun, Supercargo, had prevaricated, first denying every thing, then stating before the magistrate that some of the persons concerned told the sailors to take care the ship should not return, and now before the Court totally denying his second declaration. The impression upon the Court was, that such intention did exist, but that the carrying it into effect became unnecessary from the accident at Makulla, by which the Vessel was finally lost.

The judgment of the Court was that the prisoners did insure both the vessel and Cargo for a much larger amount than their value, and took up also larger sums on Respondentia, but were acquitted of the charge of using unfair means to destroy or cast away the vessel, and being thus acquitted of the Criminal part of the charge, were discharged. The prisoner Meetha Mecan, being Qazee of the Provincial Court, and having been proved to be implicated in these transactions, which was inconsistent with his high situation, it was left for the Court at large to decide whether he should be recalled to his situation, or declared unfit to hold it, and he was afterwards pensioned.

The Court of Appeal likewise brought on Record in the suit, certain Questions put by the Judge of Circuit on the above Trial, to twelve Merchants of Surat, with their answers annexed, as follows.

Question First. In order to render an Insurance valid, ought not the Goods on which the Insurance was effected to have been shipped?

Whenever

Whenever it is proved that the insured Goods were actually shipped, the underwriters are responsible. Answer.

A person having no Goods at stake, insures as if he had, and the underwriter reinsures himself to another. Are either or both entitled to recover? Question Second.

If goods are not shipped, neither are entitled to recover, because the insurance is void. Answer.

A person having only a small value at stake, insures to a large amount. Is he intitled to recover any, and to what amount? Question Third.

This being a fraudulent transaction the Insurer cannot recover any thing whatever. Answer

A person having property at stake insures it for its full value to one underwriter, and again for its full value to another. Is he, in consequence of so doing, entitled to recover the full value from them both? Question Fourth.

If no Fraud is proved as to the Ship, both the underwriters should jointly make good the true and just value of the Goods. Answer.

Are underwriters liable for the whole loss when only part of the Goods are lost, and are they entitled to the Goods saved? Question Fifth.

When the Goods are regularly lost, the owner disposes of those saved, and carries the amount to the credit of the underwriters, who make good any deficiency. Answer.

If a ship insured is not heard of, after what period are the insured entitled to call upon the underwriters to pay the money? Question Sixth.

Enquiries ought to be made at the Port from whence the ship sailed, and on the arrival of any ship of the season coming from that Port, to ascertain the news. Upon proof of her being lost, 8 months' (Interest) should be deducted and a per Centage be allowed to the Insured. Answer.

If

Question Seventh. If a person insures only part of his Goods, and a part of his Goods are thrown overboard, lost, or damaged, in consequence of bad weather, are the Insurers liable to pay to the extent they have underwritten, or not?

Answer. In respect to large ships that make long voyages, it is customary in the event of Goods being thrown overboard, lost or damaged, for the owner to suffer, but with respect to small vessels, the loss is borne by the underwriters.

Question Eighth. Is it necessary in the event of any accident or loss happening to a ship, to inform those who are about to become her underwriters? For instance, the Captain of a ship, or a merchant having Goods on board, writes that the ship has met with an accident, and become so leaky that there is every reason to fear her being lost, and she is thereupon insured without the danger being made known to the underwriters; is such an Insurance good?

Answer. It is customary, whether the state of a vessel thus circumstanced be made public or not (provided no unfair means have been made use of for her destruction) that the underwriters should be considered answerable.

Question Ninth. Is Respondentia understood to be "an advance of money to "a merchant to be employed in a beneficial speculation, under "condition that it shall be repaid with a high Interest or per "centage in the event of such voyage being safely performed?"

Answer. Upon the safe arrival of the ship, money taken upon Respondentia becomes payable with its Premium. Interest likewise accrues if the ship does not arrive by the time specified in the Bond.

Question Tenth. Is a person lending money on Respondentia entitled to benefit in cases when the borrower has not effects on board equal in value to the sum borrowed, or when he has no Goods whatever on board?

In

In general ready cash is advanced to respectable persons on Respondentia, and on the safe arrival of the ship the Respondentia Bond must be paid. Answer.

After fully considering these Documents and the Zilla proceedings, the Provincial Court held, that the Insurances made upon the Labhsuwaee were originally fraudulent, and the Decree of the Zilla Court was therefore affirmed, with costs recovered. Decree 22d August 1816.

When the cause came on in the Sudur Udalut, the Court proposed to five native Merchants of Bombay, the same questions as above recorded in the Appeal Court. Their answers were as follows. Sudur Udalut, Sir E. Nepean, *President*, M. Nightingall, A. Bell.

The Goods must be shipped. Answer First.

The amount of the insurance cannot be recovered without bringing proof of the shipping of the goods. Answer Second.

The insurance must be paid to the amount of the prime costs of the goods shipped, including their expenses. Answer Third.

The underwriters must jointly make good the amount, according to the value of the goods. Answer Fourth.

The goods saved must be delivered to the underwriters, who must pay the full amount of the Insurance. Answer Fifth.

The money may be demanded 18 months after the sailing of the ship. Answer Sixth.

The portion of goods, out of those insured, which are damaged must be paid according to their averaged value. Answer Seventh.

In this case nothing can be recovered, not even the value of the goods thrown overboard. Answer Eighth.

On the safe arrival of the ship, the money must be paid according to the agreement along with the stipulated profit. Answer Ninth.

When

Answer Tenth. When the ship arrives safe, the Respondentia Lender must be repaid the money together with the premium.

Question Eleventh. The Court then handing to the Merchants a Draft of a Bond similar to that upon the Futteh Mooburuk, and Labhsuwaee in dispute, asked them if they would consider an Insurance Bond drawn out in that Form, to be an Insurance upon the Ship, or the Goods or upon both.

Answer Eleventh. They answered. This Bond is an Insurance upon Goods.

The Reporter, Mr. Advocate General Macklin, being called upon for his opinion, stated " that to entitle a person to recover " on a Policy of Insurance, it was essentially necessary that he " should prove an interest in the thing insured. A Policy of " Insurance is defined by all Lawyers to be a contract to " indemnify the holder of the Policy against a certain loss, and " it was impossible that there could be any loss where there " was no interest in the Goods insured." The Judges of the Sudur Udalut observed that though there were no grounds for supposing that the Grab was run ashore to defraud the underwriters, it was evident the Appellant looked to some event, either from the vessel being so old as to be incapable of performing the voyage, or other accident occurring to prevent her return to India. This was clear from the conduct of the Broker who was afraid to bind the two witnesses to their engagements, which he would not have given up if the transaction had been fair and honest; and by the Answers of the Merchants, it appeared that if Goods are not shipped, the underwriter is not bound by the Policy, and if a person having a small property at stake, insures to a large amount it is a fraudulent transaction. Lastly, it was deemed by the Court absolutely necessary that an Interest in Goods insured should be proved, to entitle a person to recover on a Policy of Insurance, and as Appellant's Interest in them was not apparent from the Proceedings, the Decree of the Provincial and Zilla Courts were affirmed with Costs to Respondent.

Decree 17th June 1818.

No. 48.

No. 48.

POONJEEA BHAEE.. and DADA BHAEE,.... .. { *Sons of Ruttunjee Manukjee Paruk,* } *APPELLANTS,*

VERSUS

NOWSHIRWANJEE SUHOORABJEE,—RESPONDENT.

Surat Udalut, G. W. Anderson, *Assis. Judge.*

Claim by Appellants, two Parsees, against Respondent, their cousin, for the amount of a Legacy left them by his father in his Will.

Zilla and Provincial Courts threw out the claim for want of proof of the existence of any Will executed by the uncle.

Sudur Udalut decided against Respondent on collateral evidence of its existence, by proof of Respondent's admission of it.

APPELLANTS filed their suit in the Zilla Court on the 10th May 1814 to recover from Respondents Rupees 7,123-1, Principal and interest due as follows. Ruttunjee and Suhoorabjee, Fathers of the parties, were own Brothers and lived together after the death of their Father, Manukjee, till such time as the Elder of the two, Suhoorabjee, had a Family. They then separated their concerns and Effects, dividing the Family House at the same time. Suhoorabjee, for fear of accident made his will in the year A. S. 1840 or A. D. 1784, in which, adverting to Ruttunjee's living in the House, he entered these words, " Ruttunjee Bhaee is to continue to live in the House as usual, " but if he should quit it, and take another, my Heirs shall " give him Rupees 3,500, on account of it." Ruttunjee lived in the House for 17 years after the death of Suhoorabjee, and finding his Family encreasing so much that he had not room enough, built a new House, and went to live in it Margsirsh 1859 A. S. or A. D. 1803, demanding the above sum then due by the will from Respondent, who promised faithfully to pay it. Ruttunjee still kept a room in the old House, under his own lock and key, and frequently demanded payment of the money from Respondent, who still continued to put him off. In A. S. 1865, or A. D. 1809, Ruttunjee died, and Appellant's having often demanded the money in vain from Respondent, now had recourse to the Udalut, suing him for Rupees 3,500 Principal sum due under the will, and Rupees 3,623-1, interest for eleven years and six months, the time which had elapsed since their Father quitted the House.

Respondent

Respondent pleaded in defence, that their common Grandfather Manukjee left no property whatever, but was maintained in his old age by his son Suhoorabjee, who acquired by his own industry every thing he possessed, and in which Appellants therefore could have no claim or title to share. The House in question was not inherited by Suhoorabjee but acquired with the profits of his labours. The rent of the room still kept by Appellants he had in vain demanded from Mihirwanjee. As to the pretended Will, he declared his Father never made one, for he was his only Child, and there existed no necessity for it. Finally, that his Father died 30 years ago, and if they had any just claim, Ruttunjee, who survived Suhoorabjee so many years, would not have allowed it to lie dormant, and Respondent pleaded the limitation of 12 years as annulling their claim at any rate.

Appellants replied, that Respondent's account of their Grandfather's poverty and his own Father's Greatness was utterly false, for the two Brothers were both in affluent circumstances, Suhoorabjee being in the service of the English Chief, and Ruttunjee holding an Office in the Castle. Suhoorabjee purchased a piece of ground in his own name, and the two Brothers afterwards jointly built this House upon it, in which they lived together. As for the limitation of 12 Years urged by Respondent, their Father lived in the House 19 years after Suhoorabjee's death, and they had only quitted it 11 years before filing the Suit, so the Rule did not apply, and they had still possession of one Room. They then exhibited an original Affidavit made in Bombay on the 26th day of December 1815 before the master in Equity to the Recorder's Court, by Khoorshedjee Son of Ardaseer Dady, certifying as true, a copy delivered in by him of the original will of Suhoorabjee Manukjee, found deposited among his Family Papers. The affidavit was attested by the master in Equity and a Notary public. With the copy of the will two other papers were given in, one a memorandum of the property, the other an old Envelope or cover to a Packet, endorsed in the hand writing of Ardaseer's Father, Dada Bhaee, "The

papers

papers of Soolee Bhaee Nowshirwanjee relative to his Father's will, &c."

The Will was dated Thursday 14th Ashad Sood A. S. 1840, or A. D. 1784 and was entituled " A memorandum of the " directions given by Solee Bhaee (Suhoorabjee) to Nowshir- " wanjee, in presence of Roostumjee Jussoo Bhaee and Ruttunjee " Manukjee (Father of Appellants) to be executed after my " death." It was signed by these two persons as witnesses, and by Respondent in his Father's name. The Paragraph relating to the House in question was as follows " I purchased a " House of Heerjee Jeevunjee for Rupees 7,500 on account of " my Brother Ruttunjee. This Heerjee may take back on " repayment of the amount sale, and Nowshirwanjee is in " that case to purchase, out of that money, another house of " the value of Rupees 3,500 for Ruttunjee, with which I have " thereafter no concern. Should Heerjee Jeevunjee not buy " the House, Nowshirwanjee shall purchase another for Ru- " pees 3,500 and give it to Ruttunjee."

The Court asked the Moodee or Head of the Surat Parsees, whether a Will made by any person, not signed by the Testator, but in his name and in his stead by his Son, in consequence of the Testator's infirmity, be a valid document or not? The Modee answered, a Will so signed owing to the Testator's infirmity, is valid and admissible according to our ancient and existing customs.

Appellants called several witnesses, but the testimony of most of them was invalidated by connection with Appellants and enmity to Respondent, and none of them could speak to any certain knowledge of the Will, or that the Testator had mentioned his intentions in favor of Appellants.

Two persons, Appellant's Goomashtas, and a Broker, deposed that they went on Appellant's part to demand payment

of

of the money from Respondent, who acknowledged the debt but said he had claims to set off against it.

One witness, Jeevunram Dyaram, who appeared for Respondent, had been his and his Father's Goomashta during 36 years, and deposed that Ruttunjee was allowed by Suhoorabjee to live in his house out of affection, and that the Grain for his yearly consumption was laid in by Suhoorabjee, on account of Ruttunjee's poverty, and witness denied that Suhoorabjee ever made a Will. The son of Heerjee Jeevunjee exhibited a letter which he said was written by Jeevunram as from Respondent on his father's part to Heerjee, mentioning something about a House, the dispute regarding which the writer said was not yet adjusted, and begged Heerjee to obtain for him letters from some people in order to settle it. This was written in a vague style, dated 12 Posh Vad A. S. 1841 or A. D 1785, and in it the following passage was inserted "I have sent to "Dada Bhaee (Appellant) copy of the writing made by the "late Solee Bhaee, and the former has probably acquainted you "with its contents. I do not intend to depart from its condi-"tions." The Respondent's Goomashta Jeevunram positively denied this letter to be in his hand-writing, or to know any thing whatever about it, and said his master never sent any thing by him without himself signing it.

The Assistant Judge observed, that it had not been established in any way that Suhoorabjee made a will, or that the copy produced was copy of a will really executed by Suhoorabjee. But supposing that this were a true copy of a will really made, yet by Section 13th Regulation 1st of 1800, the claim was not admissible, for it was specified in the will "if Heerjee Jeewun-"jee should take back his house, then Nowshirwanjee shall "purchase a house, in value Rupees 2,500, and make it over "to Ruttunjee." Now the will was dated A. S. 1840 or A. D. 1784 in which year the Testator died, and 30 years had since elapsed, and the Appellants had failed to file their complaint for

so long a period, without shewing any reasonable ground for delaying to claim performance of the clause of the will in their favor. The suit was therefore dismissed with costs.

Decree 8th Jan. 1816.

The first point which the Provincial Court considered necessary to be determined, was the time when Appellant's Father or themselves became entitled to claim performance of the clause in the Will, since Heerjee never took back the House. And Secondly, whether if it were claimable at the time of the Testator's decease, and was neglected for 12 years, it were now cognizable. Appellants had acknowledged that they made no claim for 19 years, because Respondent allowed their Father to occupy a part of the House for the whole of that period, and that it was consequently not until the separation that they could claim performance from Respondent. The Court held that performance of the stipulation was demandable from Respondent any time after death of the Testator, 32 years ago, but that the suspension of it was not such as to preclude the Court from now taking cognizance of it; for the Appellants might be considered as in possession of half the House during the first 19 years as an acknowledgment, or equivalent in lieu, of their claim, and consequently the date of the cause of action was Margsur A. S. 1859 or A. D. 1803, being only 11 years and 6 months prior to the institution of the suit. Appellants were therefore to prove the will.

Court of Appeal,
G. L Prendergast. *Chief Judge.*
T. M. Keate, *2d do.*
J. Sutherland, *3d do.*

Respondent denied that he was in possession of any house bought by his Father from Heerjee Jeevunjee, and declared the House in question was built by his Father on Ground bought of certain Goldsmiths, exhibiting his Title Deeds to prove it. Appellants requested Heerjee's Son, who gave evidence in the Zilla Court, might be now summoned, and they went on to explain that Ruttunjee and Heerjee built three houses at their joint expense, the Deeds being made out in Suhoorabjee's name, and that on adjusting the account of Building, a Balance appeared against Heerjee of Rupees 7,500 at the Credit of Suhoorabjee,

hoorabjee, who in lieu of this kept possession of the House, but offered it again in his Will to Heerjee on payment of the above sum, and in case of his not taking it ordered his Heir, Respondent, to pay Rupees 3,500 to Appellants' Father as his half of the debt due to them both by Heerjee. Jumshedjee the son of Heerjee deposed that his Father purchased the ground and built the House, of which one room was given up to Suhoorabjee about 7 years before his death, in consequence of want of room in his own house, and Suhoorabjee by degrees got the whole of it, and with the exception of one room the House was still in Respondent's possession. It appeared that witness had a dispute with Respondent, and in his deposition laid claim to the house, as unjustly detained from him. He said the Deeds were drawn out in Suhoorabjee's name because Heerjee was in the Nuwab's service, and wished to conceal all his transactions of this nature.

The Court of Appeal observed that the clause in the Will described the House in question very inaccurately at the least, for there was no proof of the Testator having purchased the house, either of Heerjee or of any one else, and if such purchase had been made, it was incumbent on Appellant's Father to have brought forward this claim for a share in their joint purchase, but he had not done this, and the claim rested entirely on the Will, which was not proved. It did not appear how a paper styled "*a memorandum to be executed,*" came into Dada Nowshirwanjee's hands; there was no reason why Respondent should have placed it there, nor why he should have given up an Instrument which made him residuary Legatee. Appellants had said it was sent to him after the dispute began, the very time when a fabrication might be expected. The Decree was, that although the Court of Appeal did not concur with the Assistant Judge that there was any Bar to the investigation of the cause under the Regulation quoted, and had entered into the merits of the suit, yet Appellants having failed to prove the Testamentary memorandum on which they founded their claim, their Appeal was dismissed with Costs.

Decree 24th August 1816.

The

Sudur Udalut. Sir E. Nepean, *President*. M. Nightingall, A. Bell, G. L. Prendergast.

The Sudur Udalut granted Appellants' prayer for taking the evidence of Khoorshedjee Ardasheer, Framjee Kawasjee, and Byramjee Nana Bhaee, to prove the hand-writing of Respondent in two letters exhibited in the Sudur Udalut, in one of which Respondent wrote to Khoorshedjee Ardasheer sending by his desire Copy of the Will; the letter was dated Monday 7th Magh Sood A. S. 1848, or A. D. 1792. Khoorshedjee Ardaseer deposed that the hand-writing on those letters appeared to be that of Respondent. Witness handed up two other letters from Respondent, and said he believed the hand-writing and signatures to all four of these papers to be by the same person; Swore to the Envelope of the Will and memorandum being in Dada Nowshirwanjee's hand-writing. Had carefully examined his letter Books for A. S. 1845-6-7-9, and 1850, but could find no answers from himself to this about the Will, nor any thing about it in them, nor any correspondence respecting it, from Respondent. Believed the date of 1848 in the letter had been altered. Thought it had been 1847, originally, not 1845. The alteration struck him when he first found the letters among his papers.

Framjee Kawasjee, thought the hand-writing on the papers was that of Respondent, and stated his knowledge of the existence of a Will because Suhoorabjee's Wife had complained to Dada Nowshirwanjee that her Legacy in it was not paid.

Byramjee Nana Bhaee, thought the signature to the first letter was certainly not written by Respondent, but the hand-writing on the second he thought was. He produced two letters, and gave it as his opinion that all these were written by the same person, Jeevunram. Believed the Envelope to be in Dada Nowshirwanjee's hand-writing.

Jumshedjee Heerjee, again called up, deposed that he thought the two letters and the others exhibited by the witnesses were all written by Jeevunram Goomashta of Respondent, whose hand-writing he knew well.

The

The Court remarked that the date of the first letter exhibited by Appellants themselves before the Sudur Udalut, Monday 7th Magh Sood, would correspond either with the year 1845 or 1848. The papers brought forward by Appellants bore every mark of authenticity, and were received by Ardasheer at a time when no dispute existed between the parties, and in the first one Respondent acknowledged the Will, and sent him copy of it. This letter, and the Envelope exhibited in the lower Court corroborated each other, the Envelope being endorsed with the receipt by the persons to whom it was addressed, (and whose hand-writing had been proved) of the Copy of the Will, and of this letter since found. With regard to the letter written in 1848 by Respondent in the name of his father, who had been then dead 7 years, the practice was so very common that of itself it threw no doubt or objection upon the document. The decrees of the lower Courts were under this View of the case reversed, and the Principal sum or Legacy left to Appellants by the Will, was decreed to them, namely Rupees 3,500, with Interest commencing from the date of their filing the suit in the Zilla Court to the present time.

Decree 25th Agust 1818.

N°. 49.

LUKSHUMUN PANDOORUNG.....Appellant,

VERSUS

RUGHOONATH MADHOWJEE.....Respondent.

Surat Udalut, J. Romer, *Judge.*

THIS suit was laid by Respondent on the 18th September 1816 through his attorney Rughoonath Oodhdhowjee to recover from Lieutenant Melville, as attorney at Surat for Appellant, the sum of Rupees 1,849-1.

Suit filed by Respondent, the Administrator to an

Respondent said he was duly appointed by the Recorder's Court of Bombay administrator to the Estate of Juggunath Poorshotmu

shotum of Bombay deceased, and in that capacity appointed Appellant Lukshumun Pandoorung, Brother-in-law of the deceased as his attorney to recover certain debts due to the Estate out of Bombay. The Brother-in-law again appointed Lieutenant Melville his attorney at Surat, and that Gentleman accordingly sued one of the debtors to the Estate named Junardhun Hurcechundjee, and got a Decree against him in the Udalut in the amount of Rupees 1,849-1, which was recovered in execution, and placed in deposit in the Udalut. Respondent therefore laid his claim now to receive this sum in preference, as Principal, to either of these his attornies. He added that he had further claims against Appellant Lukshumun Pandoorung for other monies recovered for the Etate and unaccounted for by him, which he should prosecute at Kaira, as Lukshumun Pandoorung resided there.

Estate, to receive in preference to Appellant, his attorney, the proceeds in deposit of a suit filed by the attorney against a Debtor of the Estate.

Amount decreed to Respondent, on the ground that Appellant was not specially empowered by him to recover debts by process of Law.

Appellant answered that the claim was quite unfounded, since Eleven years ago an Account Current of the Estate amounting to Rupees 13,000, was sent to Respondent in Bombay, and in which the Estate would be found Credited for this debt Rupees 1,007-3-00 as Amount of a Bond passed by the Debtor.

Respondent in reply denied receipt of any Account Current from Appellant, and said he merely wished that the money recovered bonâ fide on account of the Estate to which he was Administrator should be delivered up to him.

Appellant rejoined that he had settled the account with the Wife of the deceased, his own Sister, and asked why this claim had not been brought forward before, when they were constantly corresponding respecting the affairs of the Estate. He admitted however that one Wurdhman Suwaeechund had demanded the money on Respondent's account in 1806 A. D. but it was then refused on the same plea, viz. that credit had been given him in account for it.

Respondent exhibited his letter of Administration to the Estate, dated

dated 9th December 1805 " granting to Rughoonath Ma-
" dhowjee full power to administer according to Law, under
" an injunction to deliver in a true Schedule or Inventory of all
" the Goods, Chattels, Rights and Credits, of the deceased on
" the third of June next, and to render a true and just account
" of his Administration on or before the 3d December 1806
" A. D."

Appellant handed up Copy of the Account Current up to the 31st January 1806, in which credit was given the Estate for Rupees 1,007-3-00 received from the debtor Junardhun Hureechund 31st December 1805, but the payments on account the same Estate, left a balance due Appellant of Rupees 1,267-2-72.

He shewed likewise an English letter from Respondent dated 10th September 1808 telling him that creditors were pressing, and if he wished to come in for his claims, he ought to get a Decree in his favor as soon as possible.

Junardhun Hureechund, the debtor, deposed that when the debts of the Estate were being collected Appellant advised him, as Respondent was a hard-dealing man and would not consider his character, to pass him a Note for the amount of his debts, when Appellant would give the Estate credit for the amount and save the debtor's reputation. Being afterwards unable to pay the money on the Note, Appellant sued him and recovered it. Wurdhman Suwaeechund came to claim payment of the debt for Respondent, but finding it was already paid to Appellant, gave witness no further trouble about it.

Appellant exhibited two more notes of A. D. 1804 and 5, from Respondent, but they did not refer to the point at issue. He however therein cautioned Appellant to be particular in seeing on to Vhauwchers he paid away Cash, and called for a particular account of every thing.

Respondent's Attorney handed up a letter received by himself from his client, dated 18th and received 22d February 1817, wherein

wherein the Respondent took exceptions to the account current sent him by Appellant, explaining that some of the notes from the persons credited in account were in possession of Wurdhman Suwaeechund. The rest was much to the same effect as shewn in his pleadings.

Wurdhman Suwaeechund deposed that he had a claim against the deceased for Rupees 2,500, which he demanded of the Widow and her Brother, Appellant, but they referred him for payment to Respondent, as their Attorney in Bombay. Not being able to obtain the money, he sued them in the Recorder's Court and got Judgment in his favor. Respondent made over to him eleven Notes from Debtors of the Estate in payment, but he had not recovered the amount of any one to that day.

The Judge observed on this case, that Appellant having been appointed by Respondent, the Administrator to the Estate of Juggunath Purvoe deceased, as his Attorney at Surat to pay the debts and collect the credits of the Estate there, he had in virtue of this apppointment, taken a written acknowledgment from one Junardhun Hureechundjee for Rupees 1,033-1-00 of which sum Rupees 1,007-3-00 were due from the said Junardhun Hureechundjee to the Estate of the deceased; and the balance Rupees 25-2-00 included in the acknowledgment, was a debt due to Appellant, who after some time instituted a suit in the Court for recovery of the amount of this acknowledgment, and got a Decree in his favor. Respondent then instituted this suit to recover amount of the Decree, as a debt due to the Estate. It appeared that the accounts had not been settled between Appellant and Respondent, and although Respondent had appointed Appellant to pay and receive sums due by and to the estate of Juggunath deceased, yet he did not empower him to institute suits for the recovery of the debts due to the estate. The amount recovered should therefore be paid to Respondent, Rughoonath Madhowjee, the administrator to the estate of Juggunath deceased, leaving Appellant to settle any accounts he might have to

settle

settle with the administrator. Decision was therefore given in favor of Respondent for Rupees 1,849-1-60, amount with interest of the sum in deposit under the former decree.

Decree 6th March 1817.

Court of Appeal, G. L. Prendergast, *Chief Judge.* J. Sutherland, *3d do.* Decree 22d July 1817. Sudur Udalut, Sir E. Nepean, *President,* A. Bell, F. Warden, Decree 28th April 1819.

The above decision was fully affirmed, on Appeal by Lukshumun Pandoorung, both in the Provincial Court, and Sudur Udalut.

N°. 50.

Mt. RUTTUNKOONWUR,..... (of Huree Bhudur, widow, and POORUN BHUDUR, adopted son, by their Wukeel ROOPSHUNKUR..... SHUNKURJEE,..... } *APPELLANTS,*

VERSUS

TOOLJARAM UBHERAM'S Brother RUTTUNRAM UBHERAM; and UMROOTRAM ADITRAM; and LUKSHUMUN SHUNKUR GOWREESHUNKUR,..... } *RESPONDENTS.*

Surat Udalut, G. W. Anderson, *Assist. Judge.*

Claim by Appellants for certain Jewels as devised to them by the will of the Widow of a Relation. Dismissed for want of proof on the part of Appellants that the property sued for was distinct from that in the will, for

APPELLANTS filed their suit in the Zilla Court on the 20th June 1815, to recover from Respondents the sum of Rupees 2,500, being the value of certain Jewels, and Gold and Silver ornaments, formerly belonging to Adeet Baee, Widow of Wamun Pathuk, by her deposited with one Ubheram Mehta, in A. S. 1862, or A. D. 1806, and now claimed, after the death of Adeet Baee, by Appellants, as her Heirs. They said after Ubheram Mehta's death Respondents had seized the Jewels and refused to give them up.

Tooljaram

Tooljaram Ubheeram, one of the Defendants, and in consequence of whose subsequent death Ruttunram became a Respondent in the cause, admitted that sundry Jewels were entrusted by Adeet Baee to his Father, in presence of Girjashunkur; Dhoolubhjee Pundia; and the Appellant's Attorney, Roopshunkur Shunkurjee, with an injunction to be ready to deliver them to Appellant Ruttunkoonwur whenever called upon by them all to do so. Roopshunkur had demanded them of him since his Father's death, when Respondent had said he was perfectly willing to deliver them up on receiving a Release signed by Ruttunkoonwur and all the Witnesses above named, but that no such Release or Receipt having been ever passed to him, he had declined surrendering the Jewels, but they were then forthcoming, and he was quite ready to deliver them to Appellants, or into Court if ordered, on getting a Receipt for them.

their share of which they had already one suit pending against the Widow's Brother Vide No. 133 of the Surat Cases.

Respondents Umrootiam and Lukmeeshunkur said the pretensions of Appellants were groundless, since the Heir of Adeet Baee was Ruwee Bhudur, Son of Sheo Bhudur and Grandson of Wamun Pathuk, and that Ruwee Bhudur, as Heir, actually possessed the Revenues of the Village of great Buraehee which was formerly held by Wamun Pathuk. Therefore it was evident that Appellants were not Heirs of Wamun Pathuk, since they had no share of this Village. They said the property in question was, by Adeet Baee's Will, appropriated to payment of her Funeral Expenses, and that they had allowed the Jewels &c. to lie so long with Tooljaram for want of a proper power of attorney from Ruwee Bhudur, who as well as Appellants was at Bunares. They denied also that Poorun Bhudur was son of Huree Bhudur, but only his Brother-in-law, Brother of Appellant Ruttunkoonwur.

Appellants replied, with regard to the receipt demanded by Tolojaram, that they would not give it, but would furnish security for re-delivery of the ornaments if required, and they called upon

upon the other Respondents to prove their claim to dispute possession. Roopshunkur, the attorney of Appellants, exhibited a List of the Jewels dated 1st Margsirsh Sood A. S. 1862 or A. D. 1806 which on perusal was admitted by Tooljaram to be correct.

Copy of a Decree obtained by the Attorney against Oottumram was then filed, and the Court called for all the Proceedings of this cause.

ROOPSHUNKUR on the part of POORUN BHUDUR HUREE BHUDUR; and Mt. RUTTUNKOONWUR, } PLAINTIFFS,

VERSUS

OOTTUMRAM SHEORAM, Brother of Adeet Baee, } DEFENDANT.

Surat Udalut, S. Bourchier, Judge.

The Plaintiffs in this suit claimed from Defendant, as Brother of Adeet Baee, Widow of Wamun Pathuk, Rupees 1,250, half value of a house in Surat formerly belonging to Wamun Pathuk, left to his Widow, and by her bequeathed with other property to her Heirs Ruwee Bhudur and Poorun Bhudur. Plaintiffs said the house and property were delivered, by Adeet Baee to Defendant her Brother, with instructions to spend Rs. 2,000, on her funeral in Surat, and remit the rest to her Heirs at Bunares, who were to perform the Funeral ceremonies again at that city, or in default Oottumram was to do it by selling the house, paying the expenses, and remitting the balance to Bunares. Defendant Oottumram had privately given up this House to Ruwee Bhudur on his coming to Surat, and Plaintiffs begged they might have their share given up to them as they had faithfully performed the funeral ceremonies of the deceased at Bunares, and were entitled therefore by the Will to their share.

Defendant said the Heirs of Adeet Baee had neglected to perform the funeral ceremonies at Bunares, and he therefore intended to sell the house and property himself, and to carry this

this provision of the Will into effect, at the same time observing that though Plaintiff Poorun Bhudur claimed as adopted son of Huree Bhudur, yet being own Brother to Ruttunkoonwur, and consequently Brother-in-law to his adoptive Father, the adoption was perfectly illegal by the Hindoo Law.

Plaintiffs exhibited copy of the Will of Adeet Baee, in which she stated " that her husband on a former occasion in " A. S. 1826, or A. D. 1770, making a division of his pro- " perty, gave to her a House, money, ornaments, Apparel, and " plate, which was by different expenses now diminished to about " Rupees 5,501, at the time of her making this Will, on Tues- " day 13th Kartik Sood 1826, or A. D. 1806. She there- " by enjoined her Brother, Defendant, to lay out Rupees 2,000 " of this amount on her funeral, and cause her heirs Ruwee " Bhudur Sheo Bhudur; and Poorun Bhudur Huree Bhudur; " to expend the balance in performance of them at Bunares, " and if they failed to do it, Defendant should defray them " out of the sale proceeds of the House."

Defendant exhibited a copy of the Will precisely similar to the above, excepting that for " Poorun Bhudur" was written, " the Wife of Huree Bhudur," as Heir of Adeet Baee.

Plaintiffs handed up a certificate of certain persons at Bunares verified by Mr. R. C. Glynn Register of the Udalut there, on the 2d November 1812, that Poorun Bhudur had performed the funeral ceremonies of Adeet Baee at Bunares.

The Judge put a Question to the Shastres to know Whether a person could adopt the Brother of his Wife, as a Son, or not?

They answered " There is nothing decisive mentioned in the " Shastres respecting the adoption of a Brother-in-law." It appeared from a Table of descent exhibited by Plaintiffs that Ruwee Bhudur was the son of the eldest, and Huree Bhudur, Grandson of the youngest of Wamun Pathuk's two Sons.

The

The Judge observed that no mention of the adoption of a Brother-in-law was to be found in the Shastres, but it was immaterial whether Poorun Bhudur was properly adopted or not, as he and Ruttunkoonwur were living together, and of the same family, and the claim being only for one house, one half might be considered to belong to Ruwee Bhudur, and the other to Ruttunkoonwur; it was therefore decreed that possession of half the house be given to Roopshunkur, the attorney of Ruttunkoonwur, for her use.

Decree 27th March 1813.

Tooljaram Ubheeram, one of the original Defendants, having met his death by drowning, his brother Ruttunram was allowed to continue the defence on his part.

The Court endeavored to get the suit decided by arbitration, but could not prevail on the persons to whom it was referred, to sit. Witnesses were then called, but their evidence was deemed contradictory, besides that they were the Attornies of Appellants. In summing up the case, the Assistant Judge observed that it was evidently Appellant's intention to make out that the Jewels now sued for were distinct from, or above, the property bequeathed in the Will. Now Rupees 2,000 had been expended by Oottumram, brother of the deceased, and Appellants had a suit then pending for Rupees 1,750 their half of the Balance shewn by the Will, against the Heirs of Oottumram, and Appellants had totally failed to shew that there was any property beyond what Adeet Baee had stated in her Will. It must therefore be understood, that the Jewels in question were included in the mass of the Estate noted in the Will, and Respondents were declared justified in opposing delivery of the Jewels to Appellant's, whose claim was dismissed with Costs.

Decree 28th Dec 1816.

The Provincial Court concurring in the view of the case taken by the Assistant Judge, affirmed his decision with Costs.

Court of Appeal.
G. L. Prendergast, *Chief Judge.*
J. Sutherland, *3d do.*
Decree 8th Aug. 1817.

The

Sudur Udalut, Sir E. Nepean, *President.* A. Bell, F. Warden.

The Court called upon the lower Courts to furnish an account of the produce of those effects of Adeet Baee which fell into the hands of Oottumram, and to endeavor to ascertain whether the property now claimed in this Appeal was separate from the above mentioned effects, or not. The return shewed that Appellants had no proof whatever to bring that the Jewels claimed were possessed by Adeet Baee distinct from Rupees 5,001, noted in the Will. No account particulars could be obtained of the expenses, but it was very clear that the whole property, including the Jewels and house, did not amount to more than Rupees 5,500, for Appellants had admitted this in a Petition given in the other suit, and which was certified to the Sudur Udalut.

The Court on this fresh information decreed that Appellants having failed to prove the Jewels to be distinct from the Estate value Rupees 5,001, of which Rupees 2,000 had been truly and lawfully expended under the Will, and for their share of the balance of which they had filed a separate suit, their present claim was dismissed with Costs.

Decree 16th June 1819.

N°. 51.

GOVINDDAS DHOOLUBHDAS.....APPELLANT,

VERSUS

MUHA LUKSHUMEE Widow of Jeevundas, RESPONDENT.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

Claim by Appellant against the Widow of his Brother deceased without Issue, for the estate left

THIS cause was filed in the Zilla Court on the 30th October 1816 to recover from Respondent, the sum of Rupees 51,000, being the value of certain property, as per Inventory annexed to the Petition, left by Appellant's deceased Brother Jeevundas. Appellant said that himself and his two Brothers, Bhugwandas and Jeevundas, formed an undivided family living and

by her husband.
Dismissed by all the Courts on the grounds of the Widow being Sole Heiress to her husband in consequence of his having separated from the Family, and made his Fortune without any assistance from his Father or Brother.

and eating together. Bhugwandas died in A. S. 1858 or A. D. 1802, and Jeevundas 15 months ago. Appellant performed the funeral Rites, and as there never had been any division of the family property, he now sued for that of Jeevundas, of which his Widow, Respondent, had possessed herself.

Respondent answered, that the claim was false, as her husband inherited nothing from his Father, who left no property, but had acquired whatever he was worth by his own personal exertions. She said Jeevundas, her late husband, was brought by his Aunt, when he was only 6 years old, from his village of Chiklee, where Appellant was left, to Surat, and there brought up by his Aunt's Son-in-law Gopal Bhuwanee, who afterwards placed him with the House of Govurdhun Jugjeevun, Bankers, to learn their business. Not long after, he was transferred to their Establishment at Bombay on a small monthly salary, and then entered the service of Kaoosjee Roostumjee Patel in which he acquired all his Wealth. In A. S. 1851, or A. D. 1795, he married Respondent and entertained the Cast upon, the occasion. In A. S. 1864, he made the purchase of a piece of building ground at Surat, in the name of Duya Bhace Lal Bhace, and having erected a House on it, retired from business in Bombay in A. S. 1867, or A. D. 1811, on the fortune he had acquired, and came to reside at Surat in this house. He died in A. S. 1871, or A. D. 1815, and Respondent was his lawful Heir.

Appellant in reply said that his remaining at home and doing business in a small way, whilst his Brother was amassing a fortune abroad, did not destroy his claim to share with him, since no legal separation had ever taken place. He declared that he caused his Brother's marriage with Respondent, and that he lived with his Brother in the new house from the time he entered it till the present day. He urged that Respondent had agreed to arbitrate this dispute, and that the arbitrators had temporarily awarded him Rupees 79, occasionally for his support

port until termination of the dispute, which money he had received.

The Arbitrators proved the agreement of Respondent to abide by their settlement of the claim, but said they had not had time to do so.

The Court wished to persuade the parties to go on with the arbitration, but Respondent would not now consent, and the witnesses were therefore called.

Manuck, widow of the eldest Brother, deposed that when Jeevundas went to Bombay, Appellant and her husband remained at home at Chiklee, and Appellant went and staid sometime in Bombay by invitation, on different occasions with Jeevunjee, who about 10 years ago left Appellant, who was then in Bombay, paid them a visit at Chiklee, and took them away on a pilgrimage with him. That he expended Rupees 3,000 on the marriage of deponent's daughter, and performed the Matum Poorsee at Chiklee on deponent's husband's death. The presents on this occasions were made in the name of Jeevundas.

Appellant exhibited a letter, said to be in the hand-writing of Jeevundas, in which he talked of " our property, and dealings" in writing to Appellant, but the Court considered the document of no use in support of his claim.

Respondent proved by two Deeds the sale of two houses, one for Rupees 451, the other for Rupees 351. Appellant was called on for proof of his having paid any part of the purchase money, but was unable to bring any. Being examined as to the distribution of his father's property, said his father died in A. S. 1835, or A. D. 1779, leaving Rupees 200 or 300 in cash, about 135 Rupees worth of Household furniture, and a house in Nowsaree worth about Rupees 600, the Rent of which he, Appellant, enjoyed till A. S. 1852, or A. D. 1796. Jeevundas got no share of this property further than it was spent on his maintenance. The house was seized in 1852 by the Dessaee

of

of Nowsaree. He supported Jeevundas from the death of his father till A. D. 1787.

The Court questioning the law officers they answered, It is stated in the Mitakshura, with regard to what is not divisible, "that if any one receive property from the Estate of his "Father, a portion of the same devolves to his brothers; "but if any one acquire property by his own industry "and labor, without receiving any assistance from the "Estate of his Father, such property is not divisible on plea of "inheritance, and no brother can claim any portion of it from "him who is the maker of it." (1) And it appears in this case, that the property of Jeevunram was wholly of his own acquiring, without any assistance from Appellant, or aid from any property left him by his Father, and that Appellant did not trade in partnership with him, nor give him Assistance in acquiring it. Therefore whatever Jeevundas acquired without the aid of his Father's property, or his Brother's Assistance, is his own, and not divisible on plea of inheritance. As during his life his brothers were entitled to no share in it, his Widow after his death was Heiress to his property, if he had neither sons, nor Grandsons, nor great Grandsons.

Decree 19th June 1817.

The Assistant Judge under this Vyuvustha dismissed the Appellant's claim against Respondent for a share of his Brother's property, as his right to it had not been proved.

The

(1) Mit: Book second, commencement of the Uvibhajyu prukurnu, "The author "(Yagnyuwulkyu) explains what may not be divided. Whatever else is acquired by the "coparcener himself, without detriment to the father's Estate, as a present from a friend, "or a Gift at Nuptials, does not appertain to the coheirs. Nor shall he who recovers he- "reditary property which had been taken away, give it up to the parceners; nor what has "been gained by Science. That which had been acquired by the coparcener himself, "without any detriment to the goods of his father or mother, or which has been re- "ceived by him from a friend, or obtained by marriage, shall not appertain to the Coheirs "or brethren. Any property which had descended in succession from Ancestors, and had "been seized by others and remained unrecovered by the father and the rest through in- "ability, or for any other cause, he among the sons who recover it with the acquiescence "of the rest, shall not give up to the brethren or other Coheirs; the person recovering "such property shall take it." Cole Mit. Ch. 1st, Sect. 4.

Court of Appeal, T. M. Keate, 2d Judge, J. Sutherland, 2d do.

The Provincial Court observed that the Case depended upon a point of Hindoo Law, whether the Estate was divisible among the Brothers, or was the absolute, as self acquired, property of the deceased. Appellant had failed in the lower Court to shew satisfactorily that Jeevundas made his fortune either upon the basis of his father's Estate, or by assistance rendered by himself. In Appeal he referred to Books of account, not to establish the partnership, but the fact of living together. He also quoted a Precedent favourable to his cause of a former decision of the Court. On reference to it, Cause No. 453, it was found not to apply, since in it the Brothers lived together, and actually divided the family property (2) Appellant then on being called upon for proof of his case being similar, said he could shew that Jeevundas and he lived and traded together in Bombay. On examination he admitted that the business was conducted in the name of Jeevundas, though Appellant was Eldest of the two, but he pleaded in excuse for this that the name of a Firm depended on circumstances, and was frequently called after a child. The Court objected to receive further evidence, since it had not been adduced in the lower Court, and so far from its having been there refused, it was not even offered, and the proof, if existing, must be in Surat, since Appellant resided there, and not in Bombay. Mt. Manuk-Baee had stated that Appellant and his other Brother lived at Chiklee, whilst Jeevunjee was in Bombay, from which it was clear that the Brothers all lived separately. In the letter there was no evidence of partnership, whilst the tenor of it distinctly contradicted the assertion of Appellant that they lived together in Bombay. From Appellant's own account of the property left by his Father, it was clear Jeevunjee had inherited none of it.

Having ascertained from the Pundits of the Court, that the opinion given by those of the Zilla, was correct and agreeable to

(2) Vide Report No. 46.

Decre 30th. Dec. 1817.

to the Shastr, the Judges, finding that Appellant had not proved the points necessary to substantiate his claim to share, dismissed his appeal with Costs.

Sudur Udalut, SirE. Nepean, *President.* G. L. Prendergast, F. Warden.

The Court asked their Pundit, " If a man die leaving a " Widow, but no Children, and an Elder Brother, which of " them, according to Hindoo Law, inherits the property of the " deceased, and how is the distribution affected by the Brothers " being united or disunited?"

He answered, if two Brothers are disunited, and one of them die, leaving a Widow, but no Children, the property of the deceased goes to the Widow, but if they are united the property of the deceased goes to the survivor, who must provide food and Clothes for the Widow during her life time. This opinion is taken from the Mitakshura in the Vyavuharadhyayu, leaf 55th. This opinion agreeing with those given in the lower Courts, their decisions were affirmed with Costs.

Decree 25th Aug. 1819.

N°. 52.

RUGHOONATH OODHOWJEE, and BROTHERS..... } *Appellants,*

VERSUS

SHUREEF MOOHUMMUD; and SUYUD UMJUD SUYUD UHMUD..... } *Respondents.*

Surat Udalut, J. Romer, *Judge.*

THIS Suit was filed in the Zilla Court on the 6th August 1816, to recover Rupees 801, damages for breach of the Rights of neighbourhood by Respondents, and to prevent them from committing a nuisance.

Claims to recover from Respondents damages for a Breach of the Rights of neighbour-

Appellants said that on the West side of their family house was a small piece of Ground belonging to them, laid out in form of a Garden, with a few trees in it, and directly on the other side

of

of this Garden stood a house, late the property of a Sindian named Shekh Udum Shekh Hubeeb, but put up at Public auction by orders of the Udalut, on the 6th May 1814, and bought in the name of Shureef Moohummud by the other Respondent. They were now rebuilding it, with an additional projection with Windows and eaves, which alterations were deviations from the original plan of the House, and an encroachment upon their bounds, wherefore they prayed it might be but a stop to.

hood, caused by their opening doors and Wind owsin a wall overlooking Appellant's premises, and making new projections from their House.

Claim admitted by the Zilla Court, and an injunction issued to Respondents to restore every thing to its former state. and to remove the projection.

Court of Appeal thought Appellant's case not proved, and reversed the Decree; but the Sudur Udalut again reversed that of the Provincial Court, giving one in Appellant's favor.

Respondents called upon Appellants first to prove that their Ground did lie contiguous to Respondent's house, and next, declared that the house had stood on the very same plan as at present for the last twenty years. They said Appellants were instigated by malice, because the Respondent Suyud Umjud had refused to listen to their solicitation to let them, Appellants, have it in case he bought it, or to intercede with the actual purchaser in their favor. Respondent said he had a claim of debt against one of the Brothers, Hureechund, which he should file against him.

Appellants replied they would prove their Ground to adjoin to the house, and continued that the side of the house facing their Garden was formerly a Dead Wall, without either doors, or Windows in it, or eaves to the roof, and had it been kept so according to the original plan they would have no cause of complaint, but Respondent had shamefully built it up again with doors and Windows in it overlooking their premises, and eaves hanging over the Garden. They denied having ever proposed to him to take the house, which was of no use to them, being in a Moossulman range, and they had enough room in their own. They however remonstrated with him on his commencing these innovations, when he actually came and offered to give them a paper binding himself to block the windows up when called upon, but they had declined taking it.

Respondent pleaded the general issue on all the above points.

Appellants

Appellants exhibited a Deed of Sale of a house from Gokool Kulyan to Tooljaram Bhuwaneedas, on the 5th Rujub A. H. 1097. A plan was laid down in the Deed, and the Boundaries noted as follows. " The boundaries of this house, si- " tuated in the Nagshet quarter of Surat, are, on the East, the " Court yard of Bheema Paruk; the water from the Tiles of " his house falls into this Court yard, and the Windows also " look into the same. On the West is the house of Bheema " Paruk. On the North it partly adjoins the house of Heera- " das, and partly that of Bheema Paruk, the water falling " from the house in the Rains passing through a Wall and " running off through the house of Heeradas."

Another deed of Sale dated 26th Jumadee oos Lanee A. H. 1193, and authenticated by the Mooftee's seal, of the house in dispute, being that of Toolseeram, Son of Kuhandas, son of Heeradas, to Khooshaldas Roodram who purchased it with the money, and for the use, of Shekh Udum Shekh Hubeeb. The boundaries of this house, were " on the East, the ground be- " longing to Juggunath Laldas; on the South a party wall " between it and the house of Udumjee, (the buyer of this) the " water from the roof in the rains running through a small gut- " ter made on the top of this Wall; on the West the decayed " house of Kuhandas Heeradas; on the North, the street, into " which the water from the Gutter discharged itself."

A Bill of the Udalut for Rupees 205, contents received, against Shekh Moohummud for that amount, due for a house the property of Shekh Udum attached at the suit of Moohummud Arufand Ubdool Ghuffoor, and sold by public outcry on the 6th May 1814, to him Shekh Moohummud.

Ubdool Ghuffoor deposed that his Father took the house in mortgage about 30 years before for Rupees 200 from the owner, Shekh Udum, and lived in it. Witness was born there, and his Father only left it about 8 years ago for fear of its falling. His elder Brother sued for recovery of the sum advanc-

ed

ed on it, and the Premises were sold to liquidate the claim. He proved that there were neither windows nor doors formerly, but only a small ventilator at the back looking into Appellant's garden, and that the water from the roof fell into a gutter on the top of the Wall, and was carried through a pipe to the right by the corner of the next house.

Other witnesses corroborated Appellant's account of the former house having only a dead Wall, without windows, towards their Garden, and that the water was carried round by Gutters, from all the three adjoining houses which looked into Appellant's Garden, into the street, without falling into the Garden.

Respondents having failed to produce their witnesses until a decision was about to be passed, the Court then refused to take their evidence, since they appeared to have kept them back thus late, in order that they might have the benefit of hearing what Appellant's witnesses had stated beforehand, and might prepare contrary proofs to set their testimony aside.

Mooftee Ghoolam Alee was ordered to proceed and view the premises, and make a full report of their present state. The report shewed that Respondents had projected their first and second floors 15 inches over the Appellant's Garden, and the Eaves above all 15 inches farther. On the Ground floor they had made three Windows with Iron gratings; on the first floor three windows and little openings above, and on the second floor one large, and two small windows, all looking into Appellant's Garden. This report was laid before the Moohummudan Law Officers, with an exposition of the case as above proved. The Qazee, Mouluvee, and other Mooftee Jumal-ood-Deen, declared, " that since it was proved that Respondents had made " the windows and projections complained against, and that " nothing of the kind existed before; and that the rain water " was carried off by another channel and did not drop into Ap- " pellant's garden, Respondents had acted illegally, according " to the Moohummudan Law, in deviating from the original " plan.

" plan. This opinion was given from the Nisabool Hisab and " other Books."

Agreeably to this opinion it was decreed that as Respondents had acted illegally and contrary to Moohummudan Law in deviating from the original plan of their house, and encroaching upon Appellant's rights by allowing the rain water to fall into the Garden from their house, and opening windows, and making projections, they should take off the part of the house projecting over Appellant's Ground; shut up all the windows and openings mentioned in the Mooftee's report; and should likewise cause the rain water to pass, as formerly, through a channel made upon the wall. But this decree should not bar their coming to an amicable understanding with the Appellants.

Decree 16th July 1817.

Court of Appeal, J. Elphinston, *Chief Judge.* J. Sutherland, *3d do.*

Respondents on Appealing against this Decree, called some witnesses, Moossulmans, of whom three deposed that they were Respondents' neighbours, and had known the house for many years, and that the windows and eaves of the roof were always in the Wall facing Appellant's house, just the same as at the present time.

Moohummud Shureef, a Bricklayer, deposed that he was employed on the repairs, and he very well recollected pulling down three Guz of the old Wall, in which there were lattices, and received no molestation or warning from Appellants when employed in making the new work.

Jugjeevundas Mukundas said he was commissioned by Appellants to purchase the house for them at the sale.

The Court being of opinion from this Evidence that the Windows were originally in existence, determined to reverse the decision of the Zilla Judge, and a Decree was passed in favor of Respondents, exempting them from the Order for blocking up their Windows, Appellants paying Costs.

Decree 28th April 1818.

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Sudur Udalut, Sir E. Nepean, President. A. Bell, G. L. Prendergast, F. Warden.

The Court in the first instance brought upon Record the following proceedings, held on a former occasion when a special Appeal was prayed to be admitted against a decison in a cause of small amount on the same subject in the Zilla Court.

" Gregory Johannes complained on the 27th June 1811 to " the Sudur Udalut against a decision of the Assistant Register, " affirmed by the Judge of the Zilla Court, in favor of Mukia " Khatoon, by which he was enjoined to remove a veranda " lately built by him, as it gave great inconvenience to Mukia " Khatoon, and was detrimental to her own house."

The Sudur Udalut called on the Zilla Judge at the time to report the case, and his answer was, "the Ground whereon the encroach- " ment was made belonged to Government, but this circumstance " was not gone into, because the Decree was passed against " Gregory Johannes for having violated the Rights of neigh- " bourhood, which in this country are so peculiar, that no per- " son can build any addition to his own house, even on his own " ground, nor open a new door, or window in any wall, without " the previous permission of the neighhours, who are likely to " be overlooked, or affected by such alterations."

On the 30th August 1811 the Sudur Udalut, being desirous of ascertaining the Rights of neighbourhood as established at Surat, called upon the Court of Appeal to state " whether in the " instance of any inhabitant proposing to build an addition to " his house on his own ground, or to open a new door or " window in any wall in his house, it is obligatory on him to " obtain the previous consent of such of his Neighbours as are " likely to be overlooked, or affected by such alterations ?

The Court of Appeal answered, " according to the Hindoo " and Moohummudan Law it is incumbent on a person wishing " to open a new aperture in any part of his house, to obtain " the previous concurrence of the neighbours who may be af- " fected thereby."

The

The Sudur Udalut on the 14th October 1811, made a further reference as to the first part of the question, viz. "whether an "inhabitant might, *on his own ground*, make such alteration "without consent of his neighbours?" and the Court of Appeal replied, "as far as they could ascertain from the reports of the "Qazee of Surat, and their own Law Officers, it was not lawful for any person to make an addition to his house by which "he would intrude upon the privacy of his neighbours, without their consent."

As the case was not appealable under the Regulations, no further proceedings were held in the Sudur Udalut on the case.

The Court having now consulted its Moohummudan Law Officer, whether the Opinion given by those of the Zilla Court in the case under Appeal was correct, he said it was perfectly agreeable to their Law.

The Court observed that the decision rested upon the credibility of the witnesses, and the testimony given in the Zilla Court was more deserving of confidence than that adduced before the Court of Appeal. It was clearly proved in the Zilla Court, that with the exception of the hole for ventilation, the back Wall of Respondent's house had no other openings, and that the water was carried off quite in a different direction from Appellant's garden; and the Law opinion being consonant with that given in the Zilla Court, the decree of the Provincial Court was reversed, and that of the Zilla Judge fully affirmed with Costs in the Sudur Udalut, those of Appellants in the lower Courts to be paid by Respondents also.

Decree 12th May 1819.

No. 53.

N°. 53.

JACOB JOHANNES Attorney for his Brothers GREGORE and TATHEUS JOHANNES... } APPELLANT,

VERSUS

MUKIA KHATOON..... Daughter and Heiress of Sala Chillubee..... deceased..... } RESPONDENT.

Surat Udalut, J. Bourchier, *Judge.*

Suit against Respondent to recover a debt due to Appellants by her Father.

Dismissed by the Zilla and Provincial Court under the statute of limitations, but these decisions were reversed and the suit referred to be tried "de novo," the majority of the Sudur Udalut holding that Appellant's having given Respondent credit within 12 years for a Bill of Exchange drawn upon them in her favor, made the claim cognizable.

THIS Suit was filed on the 9th June 1807 by Appellant, as Attorney for his Brothers Gregore and Tatheus Johannes, Armenians, to recover Rupees 32,100, from Respondent as Heiress of Sala Chillubee, late a Turkish Merchant at Surat.—Appellant said the sum of Rupees 34,111,-3-18½ reas was originally due, being Rupees 10,000 Principal, Rupees 22,941-3-18¾ interest at 9 per cent upon a Promissory Note passed to Appellant in A. S. 1849 or A. D. 1793 by Sala Chillubee, and Rupees 170 Costs of a Suit (with interest) lost by him in the Mayor's and Recorder's Court of Bombay.—He said Rupees 2,011-3-18½ were paid by Respondent herself in A. S. 1854 or A. D. 1798 and he now sued her for the balance, above stated, which she refused to pay.

Respondent threw herself under the protection of the Court, as poor and ignorant of any claim of Appellant on the Estate, at the same time pleading the limitation of 12 years in bar of any which he might bring.

Appellant in reply to the plea of limitation of 12 years, stated that he formerly appointed Messrs. Bruce and Fawcett his Attornies to prosecute in the Recorder's Court, and that the Ships of Sala Chillubee, then in the Port, were attached at his instance. He was persuaded to have the attachment removed, and to allow the Ships to return, first to Surat, and then to Judda, by Respondent's Wukeel Munchurjee, but as nothing was since done for liquidating his claim, he had presented a Petition within 12 years

years from that time to this Court. He therefore prayed for judgment.

Respondent in rejoinder challenged Appellant to produce any decree of the Recorder's Court, in this claim in his favor. She denied having authorized her Wukeel Munchurjee, who was acquainted with some of the circumstances but was now in Bombay, to settle the claim, or having paid the sum Appellant had given her credit in Account for.

He exhibited the note, which was sealed with the seal of Sala Chillubee, but was not witnessed. It was dated 9th Magh Sood, 7th Jumadee oos Sanee A. S. 1849, or A. D. 1793, and merely acknowledged Receipt, from Khojeh Gregory and Tatheus sons of Khojeh Awances Aga, of Rupees 10,000, for which the writer agreed to pay three quarters per Cent interest per month without objection.

Also an account Current, made up to 1st April 1807, according to what was set forth in the Plaint, shewing the Payment by Respondent to have been made by a Bill of Exchange dated 20th February 1798, for 414 Gold Venetians, Value Rupees 2,011-3-17.

And a certificate dated 2?d July 1812, of Proceedings from the Records of the Mayor's Court of Bombay, certifying that Appellant had instituted his suit there on the 15th November 1796, against Sala Chillubee; a commission was issued to take his answer at Surat, but returned unexecuted, the Defendant having died two years before. Appellant then got his Plaint amended in the name of this Respondent Mukia Khatoon. On the 31st January 1797, sequestration issued against the Goods of Respondent to compel her to appear, as she was not within the Jurisdiction. On the 7th February, the Ship Sooleeman Shah was attached to answer the first Suit, and on the 14th February, the Ship Faizalum was attached for the second cause. On the 7th March, an attorney from Mukia Khatoon appeared

to

to defend the suit; on the 28th March the cause was heard, and the Court directed the sequestration to be removed from the Ship Sooleeman Shah, Respondent giving in common Bail. On the 2d May commissions, issued for swearing Appellant to certain Affidavits, were returned executed. On the 16th May, commissions were issued to Surat for taking Bail in both Suits, both against the Estate, and against Respondent Mukia Khatoon, which were duly executed, and no further Proceedings were held in these causes in the Court of Bombay.

From a consideration of all these proceedings, the Judge held that the cause of Action did not come within the Rule of Limitations. Appellant had pleaded that he applied to the Mayor's Court within 12 years from filing his suit at Surat, but as the cause was not cognizable by the Court at Bombay, the Respondent being then a subject of the Nuwab, Appellant had not applied to a competent Court. This his plea for bringing the cause of Action within 12 years therefore fell to the ground. If the suit were cognizable by the Mayor's Court, why was it not determined there? and if cognizable by the Mayor's Court, it ought now to be dismissed under Section 11th Regulation 1st of 1800, which says, " the Judge's Court " is not to receive a suit previously instituted in another Court " in which it may be cognizable, but is to dismiss the same " on proof, with Costs to be paid by the party suing." As Appellant had no other reason to urge for not having prosecuted within 12 years from date of the cause of action, his claim was dismissed agreeably to Section 13th Regulation 1st of 1800, he bearing all costs.

Decree 16th Sept. 1812.

Appellant in his Petition of Appeal against this decision, adduced the same arguments as in the Court below, stating however, in proof of his claim being cognizable, that *he had taken possession* of the Bill of Exchange for Rupees 2,011-3-18½ on account of his demand, within the 12 years.

Court of Appeal, M. Crow, *Chief Judge.* J. Smith, *2d do.*

Respondent distinctly denied that she was ever summoned from

from the Mayor's Court, or that she knew any thing of the Hoondee, and said Munchurjee above mentioned never was her Wukeel, and never gave Appellant any promise to settle the dispute.

Appellant again said that when the cause in the Mayor's Court stopped, he applied to the Judge, and was told that the proceedings in that suit were closed, and he had better go and institute the suit for his debt, and Costs, at Surat, where it would be settled.

The Court of Appeal held that the institution of the claim in the Mayor's Court of Bombay did not bring the suit within the 12 years required by Section 13th Regulation 1st of 1800, and therefore called upon Appellant for proof of the part payment he had alleged to have been made in 1798 by Respondent. This he declared himself unable to bring, and the Court decided that from want of such proof, his claim was not admissible under the above quoted Regulation, since he had failed in proving " that he had demanded the money in question, and " that Respondent had admitted his demand, or that he directly " preferred his claim within the period of 12 years to a Court " of competent Jurisdiction." The appeal was therefore dismissed, Appellant bearing all Costs.

Decree 9th Feb. 1813.

Sudur Udalut, Sir E. Nepean, *President.* G. Brown, J. Elphinston, A. Bell.

The pleadings before the Sudur Udalut, where the Brothers Appellants appeared personally, went upon the limitation of 12 years, Appellants claiming the benefit of the above Bill of Exchange, which they now explained was drawn by an Armenian Merchant of Bussura named Stephanos Ter Johannes upon Appellant's house, in favor of Mukia Khatoon, Respondent, which Bill the house duly accepted, but when presented for payment carried the amount to the credit of Respondent Mukia Khatoon's account, thus bringing their claim within the 12 years.

Respondent, as before, denied all knowledge of the Bill, and made exception to the evidence of Munchurjee, named as her Wukeel

Wukeel in the lower Courts (and who Appellant had made affidavit was necessary to his cause) being taken, asserting that he had been tampered with.

A Precept was sent to the Court of Appeal enclosing a summons upon Jacob Johannes to appear and give evidence in the Court of Sudur Udalut, and directing that he should produce before the Provincial Court the original correspondence relative to the Bill of Exchange, and his account Books, or such of them in which the account of the said Bill was entered, copies of such correspondence and accounts being certified by them to the Sudur Udulat.

The return to this handed up, an original duplicate letter from Stephanos Ter Johannes at Bussura to Jacob Johannes Aga, dated 3d Aream 182 Armenian Æra, or 30th December 1797, received per Packet viâ Bombay 17th Voutan or 12th February 1798. In the middle of this letter, which was very long, and related to various transactions of the House at Bussura, he said " I have received here one sum of 411 Dona venetians, and " another of 100 venetians, together 511 venetians, from Abdoor- " ruheman Endries, and gave him two sets of Bills, which he " sent to Surat to Sala Chillubee's Daughter Mukia Khatoon. " You will be pleased to pay them in due time after sight, and " place the amount to my debit, as he is the owner of my House, " and I could not displease him, and request you will pay them, " that she may not write any complaint here." In another place, " I wrote you above to pay the amount 2 sets of Bills, 511 vene- " tians, to Mukia Khatoon. I made a mistake; you pay 411 " venetians to Mukia Khatoon, and 100 to Niamun Chillubee, " the Bomar Durvesh, and receive back the Bills receipted."

An extract from the Books, being a separate Head in the account of Sala Chillubee's daughter Mukia Khatoon, dated 26th Voutan 182, or 21st February 1798. It shewed that the Bill for 414 full weight venedians was presented by Respondent on the 1st Pootan, or 27th January, and accepted. The Bill being payable

payable at 21 days' sight, was after the 4 days' Grace (Bookahee) usual at Surat, payable on this date, when credit was accordingly given with the remark, that Respondent gave the Bill in without receipt, saying she wanted it cashed, but as Sala Chillubee was indebted to the house, his Estate was credited in the amount value, at the exchange of the day, for Rupees 1,011, 796,875 Decimals.

Munchurjee Jumshedjee being called before the Sudur Udalut, deposed that he had lived in the service of Sala Chillubee for 22, and of Respondent since death of the former, for 18 years, and left her service 3 years ago. Had charge of the account Books after Chillubee's death. Sala Chillubee passed a note for Rupees 10,000 to an Armenian to whom he was indebted in that amount. Chillubee during his life paid Rupees 5,000 or 6,000 of this, as was entered in the Books, and after his death, when the Creditors' claims were being settled, Hajee Yoosoof, agent for the Estate, paid Rupees 4900 more on account this note. Two per Cent interest was settled at that time to be paid to all the Creditors. A Bill was after this drawn from Bussura in favor of Respondent upon Aka Posh, (Jacob Johannes) for 414 Venetians, which were not paid; the transaction was entered in Chillubee's Books, credit being given to the Bussura man, and Aka Posh debited for the amount. Payment of the Bill was demanded by witness on Respondent's account, but refused on account of the note. Respondent did not give up the Bill in consequence. It was now ordered by the Court that the Books of Appellant should be examined, but as he objected to it, pleading that they contained no further information in this suit than was before the Court, as above noted, the Judges, on the opinion of the Reporter, held that the above Extract, declared by three Armenians on affidavit before the Appeal Court to be a true one, was good and sufficient evidence in this cause.

The Books of Respondent being in custody of the Court in the

the appealed suit (No. 34.) were examined, and shewed Balance of a former note due by Sala Chillubee to Appellant on the 11th Posh Vud, or 25th Jumadee-ool-Uvvul A. S. 1848, or A. D. 1792, Rupees 7,000 for which, with interest Rupees 640-2, up to the 8th Magh Sood 1849, A. D. 1793, and Cash Rupees 2,359-2, then received, total Rupees 10,000, the note in question was passed, the old one being torn up. Appellant was debited with a payment of Rupees 5,100 out of this Bond, on the 9th Posh Sood or 1st Jumadee-ool-Akhir A. S. 1850, or A. D. 1794, and for three further payments, making Rupees 4,900 more, in 1851, or A. D. 1795, viz. on the 5th Moohurrum, of Rupees 1,370; on the 8th Moohurrum Rupees 1,530; and on the 6th Suffur of Rupees 2,000. This Book was signed by Hajee Yoosoof on oath before Mr. Seton, the Chief, and by him attested with his own hand on the 6th December 1796.

Appellant took exception to these Books as being only copies, and incomplete because containing no account of the Bill of Exchange.

Muncherjee, the witness, was again called up, and deposed further to the effect of his former statement, adding that on the parties meeting to settle the accounts, a dispute arose about the Balance, and Respondent desired witness to bring the Appellants to a settlement. When he went by Respondent's desire to receive payment of the Bill, Jacob Johannes raised a dispute about the interest of the Bond, and he could not settle the account, as he informed Respondent in consequence. He explained that he did not manage the estate when the two Items, Rupees 4,900, and Rupees 5,100, were paid. Jacob Johannes caused the dispute by insisting upon taking payment of these monies in a separate debt of Rupees 15,000, Respondent wishing to consider them as paid on the Bond. Declared that Respondent's Rozmul, or Day Book, was wanting among her Books shewn to him, and in this very Book the Bill was entered. When the dispute about this Bill arose, Respondent owed Appellant nothing,

nothing, as the principal of the Bond had been paid, and the interest remitted in consequence of the numerous claims against the estate. Did not know that Johannes had any claims besides that on the Bond, against the estate.

A reference was made to Surat to ascertain the existence of the Rozmul, or Day Book, but none could be found, and Respondent denied possession of any Books but those under the seals of the Udalut, among which no Rozmul was found.

The Court then exhibited the Books, handed up as the account Books of the Estate by the Udalut, in number four, to two Merchants, for their opinion whether they composed a set of Merchant's account Books without the Rozmul.

They answered, It is the general practise of Native Merchants to keep five Books of account. First, Rozmul; second Nond; third Avroo; fourth Khutaonee; and fifth, Namuve. The Books of account now shewn to us form a complete set, of which none are wanting, because the Rozmul and Avroo are included in one, as are the Khutaonee and Namuve, by which means three of these Books answer the purpose of five, which is often the practise. The fourth is an additional Nond, or memorandum Book of foreign transactions, and frequently kept distinct from the regular set of Books.

The Pleadings here closed, and the President of the Court stated his opinion to the following effect. That the letter from Bussura bore all the marks of authority, and by the Extracts from the Books, Respondent had received credit for the Venetians, though she would neither sign a Receipt, nor deliver up the Bill till she received the amount in Cash. The transaction on Appellant's part bore every appearance of fairness, and it was natural to believe, that the Bill being in Respondent's possession she would have prosecuted Jacob Johannes for recovery of its amount, unless she had considered herself in his debt. The President was therefore of opinion, that as the Bill was actually drawn,

drawn, and Respondent credited in the amount instead of paying it in Cash to her, a Decree should be given in favor of Appellants.

Messrs. Brown and Elphinston entered their protests against this opinion, Mr. Brown holding that Appellants could not be considered, from all the Proceedings, to have accomplished what the Regulations required to render their suit cognizable by our Courts, since so far from proving that the amount of the Bill of Exchange was carried to account by consent of both parties, it clearly appeared, by Extract from the Books of Jacob Johannes, that Respondent claimed payment thereof in Cash, and would not surrender the Bill until payment were actually made, thus affording decisive proof that she would not consent to its being considered a set off against the Appellant's demand upon the Estate of her deceased Father, Sala Chillubee. Mr. Brown in a former minute observed, if the amount of the Bill of Exchange was carried to account by consent of the parties, as asserted by Appellants, the Bill would have been given up under an interchange of Receipts, which did not appear to have been the case, and the right of Jacob Johnannes to withhold payment was not clear, because he was not a party in the obligation, or Bond.

The Decrees passed in this cause were reversed, and the suit referred back to the Zilla Court, to be there tried " de novo" on its merits, as Appellants had, in the opinion of the Majority of the Court, satisfactorily established that the prosecution of their claim was not obstructed by the provisions of Section 13th Regulation 1st of 1800. Decree 27th Nov. 1815.

Note. The point, whether the entertaining of the suit by the Mayor's Court would enable the Court to take cognizance of it, as having been preferred within 12 years to a competent Court, formed no part of this decision, the only point considered being, whether credit given to Respondent for the Bill of Exchange, constituted an acknowledgment on her part, of the demand.

mand. Mr. Macklin reported on this case, " The statute of " limitations is always an odious defence, when it goes to an ut- " ter denial of the debt, or of the promise to pay it, and the Courts " always lean against such a defence, construing any thing that " amounts to a promise, or admission, as fairly taking the case " out of the Statute."

The Reporter took no notice of the point of Jurisdiction of the Mayor's Court, although Mr. Brown in a former minute wished to know from him, whether Ships of Respondent's Estate being in the Port would give Jurisdiction or not. This former minute of Mr. Brown contained the only mention of the Mayor's Court in the whole proceedings, and the minutes first delivered in were annulled by subsequent ones giving the final opinion of each of the Judges on the case.

N°. 54.

MUKIA KHATOON Daughter and Heiress of SALA CHILLUBEE deceased..... } *APPELLANTS,*

VERSUS

GREGORY and TATHEUS JOHANNES....RESPONDENT.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

THIS suit was filed again on the 1st March 1816 for rehearing and investigation, agreeably to the Decree of the Sudur Udalut passed on it in appeal to that effect, on the 27th December 1815.

Appeal preferred by the former Respondent, against the revised decisions of the lower Courts, now granting to Respondents, late the Appellants, the sums sued for less the

The pleadings of the parties turned upon the respective merits of their case, as elicited in the former Trial of it. No fresh matter on either side was produced, and the same documents only were exhibited.

The Assistant Judge observed that the Bond was acknowledged by Appellant, upon whom he called therefore for proof

of

Bill of Exchange Decrees affirmed against Appellant by the Sudur Udalut.

of payment. Appellant referring to the Books of Sala Chillubee, the Assistant Judge examined them, and ordered Govind Mehta, the person through whom the payment of Rupees 5,100 was entered as paid, also Mulharee Poorshotum and Oomur Daood, through whom the Items composing the payment of Rupees 4,900 were paid, to be summoned. They were reported in the returns to be all dead. The Assistant Judge, after a minute examination of the Books observed that the Writer of the original Balance of A. S. 1849, was not the same person who wrote the last accounts, of the Payments made. Moreover the page on which the payments of Rupees 4,900 were entered, was longer than the others in the Book, and was apparently worm eaten, whilst the other leaves were all fresh, and it was therefore probable that it had been substituted for another leaf in the name of a different person. On summing up the case it appeared certain that Sala Chillubee wrote and passed the Bond in question to Respondents. Appellant therefore should prove payment or liquidation of it. Her own Books could not be admitted as proof of payment, even if they were good and to be relied on, but suspicion attached to them. If payment had been made, a Receipt would have been taken, or the Bond returned; payment was held by the Court therefore not to have been made by Appellant, who was ordered to pay the amount of suit with Interest equal to the principal, Rupees 20,000, but deducting from this sum amount of the Hoondee, payment of which had been stopped by Respondents in liquidation of the Bond. The Parties were ordered to bear their own Costs, since it was not just that Appellant should pay Costs twice in one suit.

Decree 25th Feb. 1817.

Court of Appeal, J. Elphinston, *Ch. of Judge.* J. Sutherland *Id. do.*

Mukia Khatoon was unable in Appeal to adduce any proof of Payment before the Provincial Court except the accounts, which the Court held, with the Assistant Judge, could not, even if free from suspicion, be admitted as evidence unless supported by other proof, and the Court agreeing in opinion with him affirmed his Decree in favor of Respondents, with interest, up to the

the date of this Decree in Appeal, at 12 per cent, by virtue of Section 35th Regulation 6th of 1812 which declared "that "where the Provincial Court of Appeal may confirm the Decree "of a Zilla Court, the Court is to adjudge interest at the rate "of one Rupee per cent per mensem on all sums receivable by "the Respondent under the Decree passed in his favor, from the "date of such Decree."

Decree 21th Feb. 1818.

Sudur Udulut, Sir E. Nepean, *President.* A. Bell, G. L. Prendergast, F. Warden. Decree 12th May 1819.

The Sudur Udalut agreed unanimously in opinion with the Judges of the Court of Appeal, whose decision they therefore affirmed fully, execution being ordered to be had from the estate of Sala Chillubee.

N°. 55.

BHEEKA NUTHOO,.....*APPELLANT,*

VERSUS

SHUNKURJEE, and KOONWURJEE,..... { *Sons of Narayunjee,* } *RESPONDENTS.*
and
MOHUNA and JEEVUNJEE,.....

Surat Udalut, J. Romer, *Judge.*

Suit filed by Appellant to prove his right to share the Dessaeeship of the village of Oomra in the Chouraisee Purgunna of the Surat Zilla.

Altogether dismissed by the Zilla Judge because the Collector's Books shewed that no Dessaeeship existed in that Village.

Decree reversed by the

THIS Suit was filed on the 3rd September 1816, by Appellant, as Plaintiff in the Zilla Court, to recover from Respondents a share of the Dessaeepun or Zumeendaree of the village of Oomra in the Chouraisee Purgunna, setting forth that Respondents' Ancestors in A. S. 1800, or 1744, A. D. had passed to him a Release for their share of the Dessaeepun of the village, which his ancestors had held from that time, but in A. S. 1870, or A. D. 1814, the three Respondents, laying their heads together, and conspiring with Rughoo Gosaeen, Runch,hur Roodr, and Pema Runch,hor, laid a fictitious claim against the three latter persons and Appellant, for Rupees 20 as their share of the produce of the Oomra Dessaeepun for the year 1866, or A. D. 1810, which was tried in the Umeen's Court, and

and decided in their, Respondents', favor, in consequence of the other three confederates giving in answers acknowledging the claim to be just, and Appellant alone really defending the suit. Appellant appealed against the Umeen's Decree, and the Assistant Judge, Mr. Anderson, confirmed the decision, and as a last resource, the present suit was filed by Appellant for Rupees 900, value of the yearly profits of the Dessaeepun, to try the right to it.

Courts of Appeal and Sudur Udalut, under Sec. 15 of Regulation 1 of 1800, as far as Respondent's right to the Dessaeeship was concerned, since they had obtained already a Decree for it against Appellant and others in the Umeen's Court, affirmed an Appeal, by the Assistant Judge.

The Judge entered into the merits of the claim, and decided that Appellant (as plaintiff) had brought no proof of his own loss, since from a Document obtained from the Collector, it appeared there was no Dessaeeship at Oomra; and this paper likewise proved that Respondents were not the Dessaees. The suit was altogether dismissed, and Respondents were ordered to pay Costs.

Decree 3d July 1817.

Respondents appealed against this decision as vitally affecting their rights. They exhibited copies of the Umeen's Decree, dated 21st December 1814, in their favor as Dessaees of Oomra, against Appellant and the three others, and of that of the Assistant Judge, Affirming it in Appeal, on the 23d July 1816.

Court of Appeal, J. Elphinston, *Chief Judge*. J. Sutherland, 3d *do*.

The Court thought it quite unnecessary to go into the merits of the case. It had already been decided by competent authority in Respondents' favor, the right to the Dessaeeguree of the village being expressly recognized by the Assistant Judge in his Decree on Appeal from the native Commissioner, against which decree no other suit could be entertained, by Section 15th Regulation 1st of 1800. The Decree of the Judge was therefore reversed, Costs to be paid by Appellant.

Decree 14th April 1818.

The Sudur Udalut concurred in this opinion, and dismissed Appellant's claim, awarding costs to be borne by him.

Sudur Udalut, Sir E. Nepean, *President*. A. Bell, G. L. Prendergast, F. Warden. Decree 7th July 1819.

No. 56.

N°. 56.

EDULJEE MIHIRWANJEE.....Appellant,

VERSUS

LOOLAJEE NOWROZJEE.....Respondent.

Surat Udalut. G. W. Anderson, *Assist. Judge.*

Suit by Respondent for removal of an Attachment laid in execution of a Decree of the Recorder's Court, by virtue of a Precept from the Sudur Udalut, upon certain Shops and a House Mortgaged to him under two Bonds by the Defendant of the Recorder's Court. Zilla Court decided the attachment to be valid and to remain in full force, because the first Bond was invalid as unregistered, and the second conclusive, as executed after commencement of the action in the Recorder's Court against the Mortgage. Provincial Court held, agreeably to a former precedent No. 33 that the first Bond was valid because not opposed by a registered Bond and decreed removal of the attachment, which Decree was affirmed by the Sudur Udalut.

THIS suit was filed on the 22d March 1817, by Respondent to cause removal of an attachment from four Shops and a House at Surat, mortgaged to him but attached by order of the Recorder's Court to answer a claim by Appellant against Manukjee Loola Bhaee, and others, Heirs of Loola Bhaee Jumshedjee deceased.

Respondent explained that these four Shops and the house were the inheritance of Loolajee Jumshedjee, who in A. S. 1814 or A. D. 1808, made them over to him for a loan of Rupees 2,001, delivering up the original Title Deeds with them. Interest was stipulated at 11 anas per hundred Rupees monthly, and all rent received by Respondent was to be deducted from the account. Loola Bhaee went to Bombay and died there, and in A. S. 1869, or A. D. 1813, his Heirs borrowed Rupees 400 more of him for repairs of the property, and passed him a new Bond for Rupees 2,401, which he then held, duly attested by the Registry Office, and there was besides a claim of Rupees 190, due for balance of interest after deducting Rent received, Appellant had, as before stated, caused this property to be seized. and he prayed it might be made over to him again.

Appellant answered that Respondent's claim under a mortgage was false, since he would have obtained a regular mortgage Bond from Loola Bhaee in 1808, and got it duly registered, if the Houses and Deeds had been really made over to him at that time, but the fact was that he, Appellant, had filed a suit in 1810, in Bombay against Manukjee on a note of hand

hand by him for a debt due Appellant by Loola Bhaee, who died the year before, and Manukjee in 1870 or A. D. 1814, and this mortgage in the last instance was made by collusion of Manukjee to defraud him of his just dues, and only prospect of recoverance from the Estate of the late Loola Bhaee. He explained too that he himself was the manager of all the concerns of Loola Bhaee, who had quarrelled with his own Relations, and the Heirs got Appellant to settle his affairs, including a dispute between Peshtunjee Veerjee and him about the rent of these very Shops and House. If therefore Respondent had a Mortgage Bond, why was not his, Appellant's, signature subscribed to it? He exhibited a Precept from the Sudur Udalut, dated 30th December 1815, enjoining the Judge to allow execution of an award, in possession of the persons at whose petition the Precept was granted, Peshtunjee Roostumjee and (Appellant) Eduljee Mihirwanjee, upon any property of the late Manukjee Loola Bhaee pointed out by them within the Jurisdiction of the Surat Court.

Respondent exhibited the Mortgage Bond on which he sued, dated 5th May 1813, by which "Peshtunjee Veerjee, on the "part of Manukjee Loola Bhaee and others, made over for "Rupees 2,401 four Shops belonging to Veerjee Bahmunjee, "and by him in his life time given to his Sister Jeevee Baee, "a Grandmother of the Mortgagers, to whom she had re-"stored them." The Shops were made over to Respondent, it being expressly stated in the Bond that Loola Bhaee had formerly made them with the Title Deeds over to him for Rupees 2,001 as stated in the petition.

The original Note, which he then gave in, was dated Friday 3d Asvin Vud 1864 or 7th October 1808, and signed by Manukjee Loola Bhaee, as one of the witnesses, on terms precisely what Respondent had stated in his Plaint, and to corroborate it, he exhibited a Sameedustkhut Account, "Respondent in Ac-"count with the Tenants of the Shops," from date of the note up to the present time.

Appellant

Appellant exhibited first, a certificate from the Recorder's Court dated 23d October 1815 shewing that Peshtunjee Rooshtunjee and himself filed a suit against Manukjee Loola Bhaee, for Rupees 5,314 in that Court on the 25th October 1810; second an affidavit made before the Prothonotary on the 21st November 1817 by Khoorshedjee Manukjee and Rughoonath Madhowjee, Merchants of Bombay, setting forth that they had been appointed Arbitrators in that suit by an Order of Court dated 21st January 1814, and that the transactions in dispute were those of Loola Bhaee Jumshedjee, but in consequence of his death their award was made against Manukjee, Son and Heir of Loola-Bhaee; and third, another affidavit made before the Prothonotary by Damodhur Koobeerdas, also of Bombay, proving that the suit there was for a transfer made by Loola Bhaee on Appellant for a debt due by Loola Bhaee to deponent, and paid him by Appellant, who sued the Heirs to recover its amount.

The Assistant Judge observed that Appellants had transactions with Loolajee Jumshedjee, Father of Manukjee, and after he had filed a suit in the Recorder's Court against the Estate of Loolajee Jumshedjee, his Son Manukjee had mortgaged away the Property, wherefore the mortgage in question was null and void. The note passed to Respondent by Loolajee Jumshedjee in A. S. 1864, or A. D. 1808, was in the opinion of the Court, a mortgage Bond, and as it had not the signature of the Register must be deemed inadmissible; wherefore, since Respondent had caused the present attachment in order to obtain execution of the Decree passed by the Recorder's Court, such attachment was declared valid and affirmed, and the suit dismissed with Costs.

Decree 3d Dec. 1817.

Court of Appeal.
J. Elphinston, *Chief Judge.*
T. M. Keate, *2d do.*
J. Sutherland, *3d do.*

Respondent appealed against this decision, and exhibited Proceedings of the Surat Judge in a claim by Peshtunjee Veerjee on the part of his Nephews Jumshedjee and Dada Bhaee versus Eduljee Mihirwanjee, the present Appellant, for removal of an attachment illegally placed by him on two houses, upon which

which claim the Judge had decided, that the transactions of " Appellant were with Manukjee Loola Bhaee, and Appellant " had not supported his allegation that they were with Loola " Bhaee Jumshedjee. Great part of Loola Bhaee Jumshedjee's " property in Surat, attached by Appellant, was in the hands of " Mortgagees, as of the Plaintiff in that Suit (Peshtunjee Veer- " jee,) and of (Respondent) Loola Bhaee Nowrozjee, Burzorjee " Bheemjee, and Kaoosjee Dada Bhaee, and the small portion not " mortgaged was still undivided among the Heirs, nor was it " known what portion of the mortgaged property, when it " should be redeemed, would fall to the share of Manukjee, " against whom his claim was certainly established, but as " the attachment in this instance could not lie against the whole " property of Loola Bhaee Jumshedjee, it was adjudged to be " raised, Appellant being left to recover his demand from such " property as he should prove to belong to Manukjee's share." (1)

The third Judge observed on the case under Appeal, that the action in the Recorder's Court was against Manukjee personally, who defended the suit, and became responsible. Under this view he had every right to alienate any house or property by a mortgage, which would stand valid if not made with the view of defrauding the creditors. In the present case Respondent, for removal of the attachment, alleged undisturbed possession under a mortgage of A. S. 1864, or A. D. 1808, renewed in A. S. 1869, or A. D. 1813, and he ought to be permitted to prove the first mortgage, since non-registry was held by a decision of the Court of Appeal founded on a Decree of the Honorable

(1) The Provincial Court (No. 634) afterwards affirmed so much of this Decree, as granted removal of the attachment sued for, but amending it by striking out so much as related to the claim against Manukjee Loola Bhaee, as having been only incidentally before the Zilla Court.

Appellant was expressly left to take regular steps to establish his claim against Manukjee.

Instead of doing so he further appealed the case to the Sudur Udalut, and the suit being tried in that Court sitting at Surat, the decision of the late Court of Appeal was affirmed.

rable Court of Sudur Udalut, not to vitiate a Bond, against which no Registered Bond was set up. In the event of Respondent satisfactorily establishing uninterrupted possession under the first mortgage, the Decree of the Assistant Judge ought to be reversed, as far as it interfered with Respondent's interest in the mortgage.

The Chief Judge said, It had been decided by the Honorable Court of Sudur Udalut, that the non-registry of a Mortgage Bond did not render it invalid, but a Bond duly Registered should have the preference. The note therefore, although not Registered, was still a good and valid Document in the present suit, where no Registered Bond was set up against it. It was dated in A. S. 1864 or A. D. 1808 antecedent to the period when Appellant commenced his action in the Recorder's Court, and advanced a prior claim on the Estate of the late Loola Bhace Jumshedjee, sufficient to justify removal of the attachment until the Respondent's claim should have been formally adjusted and decided upon.

The second Judge said, The Court was not called upon to examine the validity of Appellant's claim upon the property attached. He was amenable to coheirs, mortgagees, and all others having a Lien upon it. The question was, whether Respondent had any such Lien as would defeat Appellant's claims whatever they might be. The suit was to withdraw an attachment upon certain houses, upon the plea that the property was secured by prior mortgage to the Respondent. To prove his Title two Deeds were exhibited, the former being a Registered mortgage Bond, the second a Deed of pledge, not registered. The Assistant Judge had objected to the first of these, that it was executed by Manukjee pending a Trial at the suit of Appellant in the Recorder's Court, on the issue of which this property was liable for Manukjee's debts. The second was considered by the Assistant Judge as a true Deed of mortgage, but inadmissible in evidence under the Regulations, in as much as it was not registered.

The

The first ground of the rejection of the suit was supported by an order from the Sudur Udalut, and by copy of an award made in the Court of the Recorder, and dated 10th March 1814. The second Judge was not of opinion that these documents were of themselves sufficient to bear out the Assistant Judge's decree, for the order of the Sudur Udalut of the 15th December 1818 could not apply to property legally mortgaged, and duly registered, in the month of May preceding. The next question then was, whether the property in dispute was legally mortgaged prior to the 30th December 1815. Upon this point it appeared, that the mortgage Bond was not, neither did it purport to be, signed by Manukjee, but by one Peshtunjee Veerjee on the part of Manukjee the son, and two others coheirs, of Loola Bhaee deceased. But there was no record of any power or authority so to sign being produced by the said Peshtonjee Veerjee, either at the time of Registration, or at the time of trial before the Assistant Judge. The second Judge therefore considered that the Decree of the Assistant Judge should be affirmed, because the mortgage Bond was of no validity, and the note no evidence by Regulation.

The Court of Appeal called for evidence in proof of the mortgage Bond of A. S. 1864, or A. D. 1808, and of the Mookhtiyarut under which Peshtunjee Veerjee acted during the absence of Manukjee at Bombay when the renewal of the mortgage took place, as well as any other evidence the parties could bring forward.

The mortgage Bond was clearly proved, and the Tenants of the Shops stated they held them of, and paid the rent to, Respondent.

Peshtunjee Veerjee appeared, and produced a counterpart Ikhtiyarnamu or agreement, executed by Manukjee on the 9th Ashad Sood 1865, or 22d June 1809 to deponent, as acting for Jumshedjee Suhoorabjee, and Dada Bhaee Buhramjee, joint heirs with the Writer in the property of Loola Bhaee, on their

sending

sending him to Bombay to settle their affairs and manage their Agency business there. It appeared from this paper that these two persons were minors, and the agreement was only to be binding on them till they came of age. The deponent said he had executed the mortgage Bond by virtue of this agreement.

The Chief Judge again observed that the Bond of A. S. 1864, or A. D. 1808, was not registered, but in the case of Narayundas Laldas versus Loolajeeshunkur Dhoolubhram, No. 568 of the Court of Appeal's File, the validity of an unregistered Bond was admitted, in conformity with a precept from the Sudur Udalut under date 28th November 1815 explanatory of the provisions of Regulation 4th of 1802, and which decided, " that when no registered Bond is set up, judgment may be " given in favor of a mortgage Bond not registered, provided its " authenticity in other respects can be satisfactorily established." (1) This bond was therefore a valid document, upon which, had there been no subsequent one, a judgment might have been given. It must consequently be considered admissible evidence that the transactions between the parties had origin even before the commencement of the action in the Recorder's Court. Both Bonds had been proved, and the general powers which Peshtunjee Veerjee and Manukjee Loola Bhaee had actually given for acting in all matters for the Estate of Loola Bhaee Jumshedjee, being considered an authority for the transaction of 1869 or A. D. 1813, the principal question remaining would be, how far the Bond then executed gave the Respondent that priority for which he contended? It certainly was passed subsequently

(1) Vide No. 33 of these Reports, in which the words quoted by the Chief Judge are recorded. It formed the precedent for the decision of the appeal of Narayundas Laldas above mentioned, who preferred it against a decision of the Assistant Judge of the Surat Zilla, throwing out his claim as mortgagee, because his Bond was not registered, which decision the Court of Appeal reversed by an interlocutory decree, declaring the Bond recoverable as not opposed by a Registered one, and directing the suit to be tried " de novo" on its merits. The Assistant Judge, finding the Bond valid in other respects, decided in favor of Appellant, and the decree was finally affirmed by the Provincial Court.

sequently to the date of Appellant's action in the Recorder's Court, but, taken in conjunction with the Deed passed in 1864 or A. D. 1808, there was no room for supposing that there could have been any fraudulent intention on the part, either of the deceased Manukjee, or his heirs, to give an undue preference to one creditor at the expence of another. If it be an acknowledged principle of law, " that property cannot be bound but " from the day of signing a judgment," it was of importance to bear in mind, that the Registered Deed bore a date, prior both to the award of arbitration made in the Court of the Recorder, 30th March 1814, and to the order of the Sudur Udalut of 30th December 1815, which transmitted the Decree of the Recorder's Court for execution. The Shops themselves had been in the possession, or under the management, of Respondent for the last 9 years.

The claim of the Respondent, as far as related to his interest in the property, was held by the Majority of the Court, since the third Judge concurred in opinion with the Chief, to be valid, and the attachment as far as Respondent's interest was concerned was ordered to be removed, Appellant bearing Costs.

Decree 21 August 1818.

This decision was affirmed by the Sudur Udalut, and the Appeal dismissed.

Sudur Udalut. Hon'ble M. Elphinstone, *Presd.* Sir C. Colville, A. Bell, G. L. Prendergast, Decree 15th December 1818.

N°. 57.

MEER WULEE-OOD-DEEN HOOSSAIN,..APPELLANT,

VERSUS

NIHALCHUND BHAEE SHAH,.....RESPONDENT.

THIS suit was filed in the Surat Udalut on the 28th January 1817, to obtain an injunction for preventing Respondent from taking in a piece of ground in the Hydur Poora adjoining his Garden

Surat Udalut, G. W. Anderson, *Assist. Judge.*

Suit by Appellant, as Proprietor of the Hydur Poora of Surat to recover from Respondent some ground in it upon which he had encroached. Pleaded in defence that the ground claimed by Appellant had descended by inheritance to Respondent's father-in-law who mortgaged it to him. Zilla Court decided that Appellant's Title was better than that of the mortgager, and decreed to him as sued for. Courts of Appeal and Sudur Udalut decided after minute investigation respecting the Title Deed under which Respondent's father in-law held the land, that the Deed being valid Respondent's right to retain the land was superior to that of Appellant whose claim was dismissed.

Garden and belonging to Appellant, and also to recover certain fees due to Appellant upon buildings which Respondent was carrying on in his Garden. Appellant had about a month before filing the suit complained by Petition to the Judge, and the ground in dispute was measured by Bhana of Sulabut Poora, Land surveyor, in presence of three persons, one appointed by each of the parties, and a third by Chooneelal, the Nazir, when 2,100 Guz of Ground were found to have been taken in by Respondent. This suit was therefore filed to recover the land, or damages in Rupees 10,000 for the trespass and loss of the property, including some trees destroyed by him, and a well taken in with the Ground.

Respondent answered that the Land in Hydur Poora, upon which he was making this Garden, had been, with the buildings and Trees, for a century past in possession of his Father-in-law Mukundas, and his Ancestors; that the Estate descended from Mukundas to himself. This suit was clearly unfounded and malicious, for the whole Poora, if sold, would hardly fetch the amount Appellant had laid his damages at.

Appellant replied that all the lands of Hydur Poora descended to him by inheritance from his late Father, in whose name he held a Deed of sale of them. With respect to Respondent's assertion that the land in question was his proper inheritance, he wished to know what occasion he had then to receive in mortgage from his Father-in-law, Mukundas, one of two pieces of land which he held under a Hibbehnamu bearing the seal of the late Nuwab Hydur Koolee Khan in the name of Dyaldas Son of Mukundas. Of this Hibbehnamu he had taken a Copy at a former measurement of the land by the Qazee, and Respondent at present held 2,101 Guz more than were laid down in his Deed. As to Respondent's objection about the value he had put upon the Ground, it belonged to Appellant whatever its value might be, and instead of reasoning about its being worth more or less, he ought to cease building upon it without Appellant's permission.

Respondent

Respondent said in rejoinder that the mortgage Bond to which Appellant alluded, specified the Area of the Ground, the well and the Trees, in dispute, and this Deed was attested by the seal and signature of Appellant's Father. It was evident therefore that he could have had no claim to the property. The land was taken from Pranwulubh, Son of Mukundas, whom Appellant should sue, and not Respondent the mortgagee, who was only building with the money, and for the benefit, of the mortgager Pranwulubh.

Appellant exhibited a Deed of Sale dated 12th Suffur Sanee A. H. 1196 or A. D. 1782 by Faizoolla Khan, and the Heirs, Daughters, and slaves of Beelal Mookummud Khan, of two pieces of cultivated Ground, measuring 70 Beeghas, situated within the Government of Surat, in the village of Oomurwara, Chowraisee Purgunna, outside the Sulabut Poora Gate, also six Beeghas of land in the Sulabut Poora, near the Eedgah " and the whole " of the Hydur Poora land within the walls of Surat" for Rupees 7001 to Hoshmund, Domestic of Appellant's Father Meer Kamgar Khan, Alias Meer Hydur, Son of Meer Taliyar Khan, Meer Moohummud Huyat, for his Master's sole use and benefit.

Respondent handed up a mortgage Bond, dated 11th Rumzan A. H. 1223 or 1st November 1808 passed by Mukundas Duyaldas, to Govurdhun Kasheedas on the part of Respondent, making over to him a Bungalow, Stable, 15 Huts, two Wells, a Reservoir, and Trees with Garden Ground about, for the sum of Rupees 1001-0-00. The Garden was said to be " situated on " the Estate of the deceased Nuwab Hydur Koolee Khan, in " Hydur Poora within the Walls of Surat," and the mortgager gave up with his Property a Title Deed, being a Hibbehnamu bearing the seal of the said Nuwab. This Bond was registered in the Udalut on the 15th December.

By a separate Rent Bond of the same date, interest was stipulated on the sum advanced at Rupee $\frac{1}{2}$ per Cent, per Month,

and

and Rent calculated at 5 Rupees per month, any deficiency in the receipt of it to be paid by the mortgager in Cash.

The Bond was proved by the subscribing witnesses, and bore the seal of Meer Hydur Sahib, Appellant's Father, to whom Appellant, so one of the witnesses said, himself carried the Deed in-doors for the purpose of being attested by him.

Respondent being unable to find the Hibbehnamu, Appellant was called upon to exhibit the copy he had taken, and the Records of the City Qazee were referred to, and found to contain copy of the original Deed, which bore date 7th Zilhez 1126 A, H. or A. D. 1711 and was granted by the Nuwab to Duyaldas Son of Moorardas, Son of Kulyandas, of the Sreemalee Bunyun Cast, " who, having accepted a piece of Ground on the border " of the Hydur Poora Tulao, within the Walls of the City of " Surat, took possession of the same in order to build on it, and " erected buildings accordingly, wherefore it was by this Deed " declared that any claim hereafter on Dyaldas for the said Pro- " perty, as described with its boundaries in the body of the " Deed, would be unfounded."

The Qazee deposed that this Copy was delivered to him in a dispute between two of Respondent's neighbours, caused by fall of a Wall between their premises, and forming one of the boundaries of the land in question.

Mooftee Ghoolam Alee was ordered to measure it, both according to the Hibbehnamu, and to the mortgage Bond, and to make a Plan himself, and report upon it.

His report shewed, that the Foundations of the House, Stable, and Huts corresponded in both Deeds, as did the size of the Reservoir, but Respondent held 7 pieces of Ground, amounting to 5062 Guz 3 Tussoo more than was specified in the Hibbehnamu, and the ground now claimed by Appellant out of this measured 1332 Guz $23\frac{1}{4}$ Tussoo.

It appeared from the evidence of Witnesses, that Respondent had thrown down certain Huts upon the Ground, and had likewise removed a Boundary Hedge, and exceeded the limits of the land mortgaged to him.

The Assistant Judge thought that Appellant was fully and legally justified in filing this suit against Respondent, in preference to suing the mortgager. Respondent's building on the Ground on behalf of the mortgager, was an illegal and improper measure. The original Hibbehnamu being said by him to be mislaid was a mere evasion and pretence, and from his inability to produce it, and from the tenor of the document itself, as recorded in the Qazee's Dufturs, it was clear that the Ground in dispute was not his property, and there was every reason to believe that the mortgager and mortgagee had prepared this mortgage Bond for the purpose of enabling them to keep possession of the property. None of the witnesses called by him could prove the Ground to be his property, and it was decreed, in conformity with clause 4th Section 6th Regulation 3d of 1814, (which provides " that no length of time shall be considered to " establish a prescriptive right of property, or to bar the cogni- " zance of a suit for the recovery of property, in cases of mort- " gage or deposit, wherein the occupant of the land or other " property may have acquired or held possession thereof as mort- " gagee or depositary only without any proprietary right; nor " in any other case whatever wherein the possession of the actual " occupant, or of those from whom his ocupancy may have been " derived, shall not have been under a Title believed to have " conveyed bonâ fide a right of property to the possessor,") that the Ground in dispute was the property of Appellant, and Respondent was enjoined to remove his buildings from it, he bearing Costs of suit.

Decree 6th Sept. 1817.

The chief ground of Appeal by Respondent was that Appellant, in purchasing the Hydur Poora, only purchased the proprietary Right to the land, which gave him a Fee upon all Deeds

Court of Appeal, J. Elphinston, *Chief Judge.* J. Sutherland, *Third Judge.*

of

of sale &c. which must bear his Seal. He could not remove houses already built, nor prevent sales and mortgages, nor claim rent; and moreover the Ground had been in possession of Duyaldas, his Heirs, and successors, for 97 years before Appellant's Father purchased this Right, and his claim was not cognizable even by the Regulation quoted. He contended likewise that the Report of the Mooftee was incorrect, since Duyaldas's own property bounded it on the north, and the excess above the Hibbehnamu measurement was caused by his possessing this.

Appellant said in answer that the Nuwab Hydur Koolee Khan purchased the whole ground Plot of the present Hydur Poora from the Patel of Nowa Village, in the reign of Firokhseer, 109 years ago, and gave it to people to settle upon, by Sunnuds or Deeds under his own hand and seal. Whatever land in the Poora was not held under such Sunnud, belonged therefore to him, and he did not claim that held by Duyaldas, but his own, which Respondent had taken in.

Respondent having found the original Hibbehnamu, produced it. The terms were the same as shewn in the copy, but distinctly laid down the boundaries and measurement of seven separate pieces of ground. It was dated 21st Suffur, in the 2d year of his Majesty (Firokhseer) or 1126 of the Hijree Æra.

The Court observed that the suit originated a claim of ownership to a piece of ground situated between the high road and the unquestioned property of Respondent, by Appellant, who in support of his title exhibited a Deed by which he held property in the Hydur and Sulabut Pooras, containing however no such minute description as to identify the ground litigated, whereas Respondent's title arose out of a Deed of Gift granted many years ago by the Nuwab Koolee Khan, acknowledged by the adjacent householders, and upon a mortgage Bond executed by Mukkun Duyaldas and duly registered, by which, as clearly appeared from a description therein of it, the piece of ground in dispute was conveyed to the Respondent, and this Bond was authenticated

thenticated by the Seal of Appellant's Father, who would not by such act have recognized the Title of Mukkundas Duyaldas, had he had any claim to the property. The Court considering these Deeds as good and valid Documents, decreed that as the piece of ground in dispute was originally transferred in Gift by a Nuwab of Surat to Duyaldas, whose descendant, Mukkundas Duyaldas, mortgaged it to Respondent in A. D. 1808, the Assistant Judge's Decree should be reversed, and a decision was given in favor of Respondent accordingly, with full costs.

Decree 21st July 1818.

The Appeal was founded entirely upon the Deed exhibited by Respondent to the Court of Appeal, as that of Nuwab Hydur Koolee Khan, being a Forgery, for proving which to be the case, Appellant entered the following objections.

Sudur Udalut, Hon'ble M. Elphinstone, *President.* A Bell, G. L. Prendergast,

First.—That the whole of fourteen Deeds of Gift and six Purwanus in Appellant's hand, executed by the same Nuwab, bore the Nuwab's Seals Circular, whereas this Deed bore an octagonal one, and was written in a different hand, and that an octagonal Seal was never heard of before.

Second.—This Deed was dated 21st Suffur, in the 2d year of Firokhseer, and in the 1126th of the Hijree, whereas this Nuwab succeeded to the Government of the City of Surat on the 26th Zilhez in the 4th year of Firokhseer, and 1127th of the Hijree, and it was subsequent to this even that he purchased the Ground on which the Hydur Poora was built.

Third.—In this Deed were found the words Buldeh or City, and Moozahimut or Obstruction, which were not to be found in any of the others. In this too, the measurement of length and breadth followed the account of the boundaries, whereas in the others it was the reverse.

Fourth.—The Nuwab affixed his seal on the right side over the first line of all the other Deeds, whereas in this it was on the left.

Fifth.

Fifth.—Mooftee Ghoolam Alee in his measurement divided the land into seven portions, and now in this Deed the land was likewise divided into seven portions, whereas when the original Deed was twice shewn to Appellant, the first time when the mortgage Bond was drawn up, and the second time when the dispute about the Wall occurred, both his people and the Qazee's took Copies, which only mentioned two portions.

Appellant filed, in support of his second objection, an Extract from a Persian work preserved at Ahmudabad and in the possession of Ulee Moohummud Khan Diwan, called Meerut-i-Ahmudee, containing an account of the Government of Nuwab Hydur Koolee Khan and other Royal Personages, from which Appellant wished to prove that the Nuwab did not succeed to the Government of Surat until 22 months after the date shewn in the Hibbehnamu "Account of the Soobedaree of the Prince "of Princes, the most noble of the Rajas of Hindoosthan, "Muharaja Ujeet Singh Zumeendar of Joudpoor, and of the "Deewanee of Mookturum Khan, and of Hydur Koolee Khan."

"After the dismission of Daood Khan Punee, the Soobedaree "of Ahmudabad was conferred on Raja Ujeet Singh of Joudpoor, "who had the rank of Sheh Huzaree Zat, or a command of Six "thousand Cavalry. He was exalted by receiving a Robe of "Honor, and a Firman, and the Foujdaree of Sooreth was con-"firmed, according to former usage, to Koonwur Ubhee Singh. "The Muharaja sent as his Naib of the Soobu, Bujeeraj Bhun-"daree, and Futteh Singh as Naib of the Foujdaree of Sooreth, "These two departed, and on the 7th Shaban 1127, Bujeeraj "arrived at Ahmudabad and Futteh Singh went to Sooreth, "also Ubdool Humeed came to the city, and received the of-"fice of Guardian of the Gunj Ahmud Kuthao, the situation of "Bukhshee, and Wakia Nigar. Bhundaree was assiduous in "carrying on business, making arrangements, and appointing "Foujdars and Thanedars. At that time Inayut Oolla Khan, "(who in the reign of the late Monarch was Deewan of the

"Royal

" Royal Treasury, enjoyed the King's confidence, and was one " of his principal nobles,) having obtained permission of his " Majesty to travel into Arabia and make a Pilgrimage to the " Holy City of Mecca, arrived, and after staying a few days " to rest himself, proceeded to Soorut, where he embarked on " board a Ship at the proper season. On the dismission of " Mookturum Khan, the Deewanee of the Soobu was, in the " fifth year of his Majesty's Reign, from the commencement " of Fusul Khureef, conferred on Hydur Koolee Khan, who had " the Rank of Dus Huzaree Zat, or a command of ten thousand " independent Cavalry. At the same time, by the dismissal of " Moonim Khan, he obtained the Moottusudeegeeree of Soorut, " and of the Royal domains, and on the dismissal of Syud " Akeel Khan, he got the Moottusudeegeeree of Cambay and " in like manner succeeded Bunseedhur in the Foujdaree of " Buroda, and Nadol, with the Revenue of the Purgunnah be- " longing to the Palace of Ahmudabad and the Foujdaree of " Arhur Matu. After being honored with a Khilaut, and Sur- " Pech, he departed and arrived on the 9th Zilhuz at Meerza " Shah Bheekun's in the environs of Ahmudabad, and then ap- " pointed Naibs. He also appointed Nusr-ood-Deen Ahmud " Khan, son of Shekh-ool Islam Khan, to the Naibship and Di- " wanee of the Soobu, and Moohummud Shufee, who accom- " panied him, to the Kurora of Kuthra Parcha Muhal in addi- " tion to the Deewanee, and Syud Akeel Khan to the Fouj- " daree and Ameenee of Dholka and Cambay, after which he " departed for Surat, appointing Arjoomund Khan to Petlad, " and conferring the Foujdaree of Buroda on Kasim Beg Khan, " and sending Ubdool Moonim Khan to Broach. After this " he entered Surat, and carried on affairs with assiduity. At " this time, when Syud Akeel Khan went to Dholka, he again " bestowed on the father of the writer of this History, who had " been dismissed from Cambay, the Naibship of that place, and " took him with him. In consequence of dismissions and ap- " pointments, the affairs of the Purgunnah had fallen into con-

" fusion,

" fusion, and the Ryuts had dispersed, but in one Month my Fa-
" ther put every thing in proper order. From thence he went
" to Cambay, and a few days afterwards returned, at the call
" of Syud Akeel Khan to Dholka, appointing me Naib."

Respondent exhibited copies of two Sunnuds he had met with in Surat, bearing an octangular Seal of the Nuwab Hydur Koolee Khan, and dated in A. H. 1125 or A. D. 1710, which he said were not the only ones of the kind extant, but others were not procurable.

The Judges of the Sudur Udalut ordered that the extract from the history exhibited by Appellant should be verified by a close examination with the original at Ahmudabad from which it was taken, and the copies of Sunnuds exhibited by Respondent should also be compared with the originals, and certified by the Zillah Court as true; any other Deeds extant in the Records of the Court or elsewhere to be sought for, and every possible enquiry be made as to the date of Hydur Koolee Khan's accession to the Government.

The Acting Judge at Surat certified, in answer to this precept, that the copies of the Deeds which Respondent had produced had been found perfectly correct on comparison with the originals, said to have been drawn up in the time of Hydur Koolee Khan, bearing Octagonal Seals, engraved with the year 1126 Hijree, which date was also inserted at the foot of one of these Deeds. That the Kāzee of Surat stated in answer to questions put to him by the Court, that the Nuwab Hydur Koolee Khan arrived at Surat on the 26th Zilhuz A. H. 1127 or A. D. 1712, in the 4th year of the reign of Firokhseer, and remained three years four months and four days. The Government of Surat was again in his hands on the 1st Shaban 1133 A. H. in the 2nd year of the reign of Moohummud Shah, and was intrusted by him to Shekh-ool-Islam Khan and Ichewur Khan, who held it as his deputies one year eight months and thirteen days, the Nuwab remaining at Ahmudabad.

The

The return from Ahmudabad stated that the extract from the Meerut-i-Ahmudee, was found to be a true and faithful extract from the 123rd page of that work, and from a careful perusal of the original it appeared that Hydur Koolee Khan, who was Deewan of the Soobu, was nominated by his Sovereign in 1127 A. H. to the office of Moottusudee at Surat, where he remained 3 years. On the 6th Suffer 1130 A. H. an order arrived from Court appointing him Naib of the City of Ahmudabad, in consequence of which he left Surat on the 1st Rubee-ool-Uvvul, and arrived at Ahmudabad on the 16th Jumadee-ool-Uvvul of the same year, and continued in exercise of the duties of his Office until 1134 A. H. when the undivided Soobadaree of Ahmudabad was conferred on him by the King of Dehlee. Two Deeds bearing the octagonal Seals of this Officer, had been met with after much search, and were forwarded with the Return to the Precept.

The Court observed that the Hibbehnamu upon which the Suit mainly rested, was certainly Authentic, as the Nuwab was proved to have used an Octagonal Seal, such as was affixed to it; and Appellant's Father having authenticated the mortgage, must be considered as an acknowledgment of the right of Mukundas, the mortgager, to the Ground in question, and his power to make the Mortgage. With regard to Appellant's Rights, as obtained by purchase, they appeared to be of the following nature. When the Muharattas first appeared in Goojurat, the Suburbs of Surat were open, and they were frequently plundered. The outer Wall of the City was therefore built, a little more than 100 years ago, by contributions levied from the most opulent inhabitants, to some of whom, and to the Ancestor of the person from whom Appellant bought his Title among the rest, the Moghul Government granted certain fees, which they became entitled to receive, either from those who were already settled in the Suburbs, or might afterwards be permitted to reside there by the Government. Appellant had stated that Respondent claimed an exemption from these Fees and he intended to sue for them separately,

separately, so that they evidently formed no part of this Action, though the refusal of Respondent to pay them, in all probability, instigated Appellant to file this suit. The Court was clearly of opinion that the decree of the Provincial Court should be affirmed, and the Appeal was dismissed accordingly, Appellant bearing all Costs of suit.

Decree 15th Nov. 1820.

No. 58.

Mr. UMROOT Widow and BHUGWAN, Son,..... { *of Umbaeedas Ladha.....* } *APPELLANTS,*

VERSUS

KULYANDAS and others, Heirs of..... RUGHOONATHDAS,..... and TRIBHUWANDAS KEEKASHAH and others, Heirs of JEEVUN BHUWANEE and of his Widow DHUNKOONWUR... } *RESPONDENTS.*

Surat Udalut No 924 } of "1008 } of "1738 } 1814. J. Romer. *Judge.* Claim for recovery under award of private Arbitration of certain shares of the property of Respondents great uncle from his Widow and Sister-in law. Resisted after the Widow's death by her Sister-in-law, on plea of a will by the Widow in favor of her Son, and of invalidity of the award. Zillah Court, under the Vyuvusta of the Law Officers declared the will void, and the award consistent with the Laws of Inheritance, and therefore to be

THE two first Numbers were filed in the Zilla Court by Kulyandas, Wulubh Bhaee, and Nagurdas, Sons of Rughoonathdas with Kasheedas Sheolal, his Grandson, against Dhunkoonwur, widow of Jeevundas Bhuwaneedas, and Umroot, her sister-in-law, widow of Dhunkoonwur's Brother Umbaeedas, Respondents suing these two Women for Rupees 150,000 amount value of their shares of the property left by the deceased Jeevun Bhuwanee, who was their great Uncle by the Mother's side. Before the conclusion of these two suits, which being precisely similar, were being heard in the lower Court as one cause, the other Respondents, who claimed to be Heirs of Jeevun Bhuwanee, came in to prove their preferable title by filing the third suit against the whole of the parties then Plaintiffs and Defendants, and the three claims were considered and decided in the same decree.

The following Genealogy of the parties was afterwards drawn up in the Court of Appeal.

Wittuldas

supported which was affirmed by a Decree in Respondent's favor. Provincial Court threw out the Appeal because Appellants had preferred it against this decision instead of against another, nonsuiting herself in a direct claim for her own husband's property from Respondents. Such being also her object in this Appeal, Zillah Decree affirmed by them, and by the Sudur Udalut on the same grounds.

* Married Bhuwanee's daughter, and had by her Rughoonath.

Plaintiffs

Plaintiffs (now Respondents) said they were the legal Heirs of Jeewun Bhuwanee, and as such claimed his property. The dispute had been formerly referred by consent of the parties, under a mutual agreement or Ikhtiyarnamu to Gopeenathjee Muharaj, and Beolakhee Jumnadas, who in A. S. 1869, or A. D. 1813, had awarded to the Respondents, Heirs of Rughoonath, 5 shares out of 8 of the whole property, then valued at Rupees 50,000, and for this amount they first sued Dhunkoonwur under the award, but afterwards discovering more effects, and that Appellant Umroot was then getting hold of them on the sickness and approaching death of Dhunkoonwur, they filed on the 14th March the other suit for Rupees 100,000 (as further ascertained value of the shares of the property awarded to them) against both the former Defendant Dhunkoonwur and her Sister-in-law Umroot, whose son the present Appellant was at the time a minor. Dhunkoonwur died two days after the filing of this second Action. Appellant Umroot said in her answers to both suits, that in A. D. 1806 Dhunkoonwur, to whom the property of Jeevundas devolved, made out a Deed of Inheritance, and got it duly registered, and thereby she constituted Appellant Bhugwan her adopted Son and Heir to all property she possessed—The Respondents, Umroot said, had to set aside this Will forged the Ikhtiyarnamu which they talked of producing, but she begged to observe that it did not bear the proper signature of Dhunkoonwur, but only of her Goomashta Shamúldas, who was in league with them, and the award could not be valid, if drawn up without the full consent of Dhunkoonwur.

Respondents replied, that Appellant had formerly made an attempt to get this said Will registered, but they had come forward to prevent it, and the Registry never took place. The will was perfectly illegal, otherwise Dhunkoonwur never would have concurred in the settlement drawn up by the arbitrators which bore her own mark and signature. Of the property, Gopeenathjee Maharaj was to take one share, five shares were

to

to be given to the Sons of Rughoonath Manukchund, one to Bhugwan, and the last to be spent in defraying Dhunkoonwur's funeral expenses. This was signed by some of the most respectable men in the city, and the Will could not stand against it. She had even in her last moments signed another paper in confirmation of this settlement, enjoining the parties to abide by it, and not go to law. With regard to Appellants' claim upon the property, they declared a Farighkhut was exchanged between Dhunkoonwur and her, acknowledging that she, Umroot, had received every thing she was entitled to, either on her own or her husband's part.

Appellants rejoined, that Jeevundas Bhuwanee died in A. S. 1840, or A. D. 1784, and Dhunkoonwur having for 30 years held the property, it became her own of right, and she lawfully made it over to Appellant Bhugwan. With respect to the last paper executed by Dhunkoonwur in confirmation of the award, she was not in her right and sound senses when she passed it. In this Rejoinder Appellant also stated that she had entered a Suit against Respondents for Rupees 50,000, for certain effects attached by them belonging to herself and Children, though kept with the effects of Dhunkoonwur. The Farighkhut they mentioned, was taken from herself on the occasion of Dhunkoonwur constituting her Son Heir to her property, and could not therefore be brought against her claim on the part of her Son.

Respondents presented a counterpart agreement executed by the deceased Jeevundas Bhuwaneedas to their late Father Rughoonathdas, on their entering into Partnership. It was dated Wednesday 2d Shravun Sood A. S. 1809, or A. D. 1753, and declared their shares in the Firm to be equal, seven and half anas of the profits to be divided out to each, leaving the remaining sixteenth to be spent in charity, and the losses to be borne equally.

Appellant declared that a Deed of Dissolution of this partnership

ship would be found among the Family papers, then with all the Effects under Seal of the Court, and this Deed was taken out in presence of the parties by the officer, and produced in Court.

It was in two parts, the first bearing date 2nd Kartik Sood A. S. 1824, or A. D. 1768, purporting to be a renewal of the former partnership (after an adjustment of accounts from the date of its commencement up to the present time), by carrying the balance profits to the credit of each in equal parts in the new account, upon the same terms of division as were agreed on in the last. The second part was an acquittal, entered at the foot, in the handwriting of Rughoonathdas, containing a dissolution of their Partnership in Sarees, or women's clothes, the Books of which were closed on the 15th Asvin Vud A. S. 1833, or A. D. 1777, and with which Rughoonathdas was in future to have no concern, taking however to himself the Trade with Juddoo Sheodas, Saree Merchant of Rusodee. He closed this Deed of dissolution of his share in the profit and loss of their Poona House, which remained to be divided hereafter.

Respondents produced the Ikhtiyarnamu which was dated Friday 7th Vyshak Sood A. S. 1869, or 7th May 1813, and signed by Dhunkoonwur and Respondent Kulyandas, for himself and brothers. It stated that Dhunkoonwur Widow of Jeevundas Bhuwaneedas on the one part, and her Nephews, the five sons of Rughoonathdas, on the other, having mutually referred their claims for inheriting the property of the deceased, to be Arbitrated by Sree Gopeenathjee Muharaj, and Vishnoo Boolakheedas Jumnadas, they, the Arbitrators, had, after examining all the grounds of contention, determined that the property should be divided into eight shares, one being given to the Gosaeen (the Arbitrator); one to each of the five Sons of Rughoonathdas; one to Bhugwandas Son of Umbaeedas; and one to Dhunkoonwur. The parties respectively declared themselves perfectly satisfied with, and obedient to, this award, and accountable, for any

Breach

Breach of it, to that Being who punishes the Covenant Breaker. The Arbitrators annexed a Declaration, under date 11th Bhadrapud Sood A. S. 1869 or 6th September 1813, to this agreement, " explaining that they had awarded 5 shares to the Sons of " Rughoonathdas because they had mainly contributed, by their " prudent and active services, to the prosperity of the house by " which the property was acquired, and which was still carried " on under the old Firm of Jeevundas Rughoonathdas. And " as they were Heirs of Jeevundas, to make any other settle- " ment would be like giving away to the Ass the provender of " the Cow. They said attempts had been made to get Dhun- " koonwur to retract, but this should not be allowed. The " Gosaeen in conclusion declared that it was improper in him, " an Instructor of the people, to receive any part of the proper- " ty, and he should with much pleasure divide the share allot- " ted to him among the seven others."

Appellants exhibited the Will of Dhunkoonwur, dated Tuesday 11th Moohurrum 1221 Hijree, or 1st April 1806, attested by witnesses and the seals of two Moofties, and Registered by Mr. Bourchier on the 14th April. By this Deed Dhunkoonwur constituted Bhugwandas Umbaeedas Heir to all her property, consisting of a substantial House in the Shahpoor Ward, Household Furniture, and Utensils, Jewels, Ornaments, Wearing Apparel, Cash, outstanding Debts, Stock in trade (comprising Mushroo, or Brocade, and other Cloths,) as descending to her from her husband Jeevundas and then in her possession, her true and lawful property, free from the claim of any person or partner whatsoever.

Respondents objected to this Deed, that it wanted their signatures, as legal Heirs, in confirmation of the alienation of the property, and was therefore of no force.

Appellant then presented the Farighkhut passed to her by Dhunkoonwur, under date Tuesday 2d Jesht Sood 1869 or 31st May 1813, in which Dhunkoonwur distinctly declared that

that her Brother Umbaeedas having managed the concerns of her house since the death of her husband, and Appellant having also served her since Umbacedas's death, she had, from an apprehension that the relatives of her late husband would after her own death claim the property, after mature consideration, separated the property of Umbaeedas and placed it in a separate apartment for her Sister-in-law, who had now no further claim, nor could the Relations of her late Husband give her any trouble.

Respondents admitted this Deed, and pleaded that it virtually annulled the provisions of the Will in Appellant's favor, but the Court did not concede this inference.

The witnesses to the agreement of Ikhtiyarnamu signed by the parties in confirmation of the award, proved that it was executed in the Temple of Balkrishna in the presence of Sree Gopeenathjee Muharaj and the other Arbitrator, and many other persons, and that Appellant Umroot was there at the time with Dhunkoonwur.

The Second paper, drawn out by Dhunkoonwur's desire on the very day of her death to prevent disputes at Law after her decease, was dated Monday 8th Phalgoon Vud 1870, or 14th March 1814, signed by her and Rughoonathdas in full confirmation of the Ikhtiyarnamu, and was proved to have been executed in presence of Appellant Umroot and of Respondents, Dhunkoonwur's approbation being first ascertained, and her proper signature taken by some of the witnesses, in possession of one of whom it was left, and produced by him on the Trial. This witness was a respectable man who could not visit Dhunkoonwur at the time from lameness, but signed the paper at his own house on Dhunkoonwur's mark being verified by the rest of the witnesses, and by the parties, in his presence.

Shamuldas, Dhunkoonwur's Goomashta, stated what took place at her death, how on that day she sent for Brij Ruttunjee Muharaj of the Balkrishna Pagoda, and kissed his feet and

those

those of his wife and daughter, and made them a present of money, and then had her head shaved, and was bathed, and was seated on a board, when she performed the worship of Vishnoo, and gave alms to Brahmuns and others. He could not say whether Dhunkoonwur gave the Farighkhut to Umroot, but the latter kept her property separate, eating with Dhunkoonwur.

The parties made Extracts from the Accounts of the House, which with the other papers were submitted to Bhaeedas Poorshootumdas Duyal, Malvee, to report to what year of Sumvut Jeevundas and Rughoonathdas continued their partnership, and how it was conducted after the death of Jeevundas.

He shewed that it commenced in 1809 Sumvut, and continued in equal shares, till 1833, when the profits of the Saree Trade were posted up in the General Account Book, all the other Transactions continuing as before. After the death of Jeevundas, the whole Trade was carried on by Rughoonathdas, and since his decease by his Sons, Respondents. The Signatures of the two partners were to be found in all the Books up to 1853 Sumvut.

The Court, submitting this Report, with the will and Ikhtiyarnamu, and shortly stating the Case, to the Shastrees, asked their opinion, First, how much of the property of Jeevundas Bhuwaneedas, which devolved to his Widow, fell to the share of the Sons of Rughoonath, under the law of Inheritance? Secondly, what were their rights, if only a partnership subsisted between their Father and Jeevun Bhuwanee? Thirdly, supposing the partnership ceased formerly, would the will which Dhunkoonwur made, after its dissolution, and when all the property was her own, in favor of Bhugwan Son of Umbaeedas, be of any validity according to the Shastr, and if not what were his claims? Fourth, supposing the Will of Dhunkoonwur to have been made whilst the partnership of Jeevun Bhuwanee and Rughoonathdas subsisted, of what value was it? and Fifth, what influence had the settlement made by Gopeenathjee

peenathjee and Boolakheedas, and acknowledged by Dhunkoonwur, on the regular will formerly made by her? The Shastrees were desired to state the real claims of all the parties on this property.

They answered the first question thus—Jeevundas Bhuwaneedas and Rughoonath Manukchund were not in partnership, and their Relationship was only that of Uncle and Nephew on the mother's side. Jeevun Bhuwanee died, leaving neither Son, grandsons, nor great grandsons. His Widow Dhunkoonwur is therefore Heiress to his Estate, and after her death, his daughter succeeds, and if he have no daughter, the daughter's son; if she leave none, then Jeevun's father; then his Mother, Brothers, and Sons of his Brother. Thus far each successor is particularly laid down, and should none of these be alive, then the Gotruja, or Gentile Relations, are the Heirs. The order of these in the Muyookhu is declared to be, first, the Father's Mother; if she be not alive, the Sister of the deceased, because of the same lineage and a nearer Relation (vide Note 1 to Case No. 43). If there is no Sister, then his Father's Father and half Brothers shall equally share the Estate, because the one begot his father, the others were begotten by the same person as himself, and are therefore equally related, (being each two removes, one in ascent, the other in descent.) If none of these exist, then in the same manner succeed together, the Great grandfather, Paternal Uncle, and the sons of half Brothers on the Father's side; these three shall have each a third share, because they are equally near Relations. Thus far of the Gentile lineage, including both Supindas and Sumanodukús, fourteen removes. And by stretching the point of Paternal relationship noted in the text, he makes the Sister entitled to the property, from her propinquity in that line. In conformity to this, Rughoonath, being born from that Sister, who was begotten of the same father as Jeevundas, is the next nearest relation; for which reason, if none of the nearer relations noted exist, the sons of Rughoonathdas are Heirs of the property of Jeevundas, and it comes to them after the death of Dhunkoonwur. The above is

taken

taken from the Muyookhu. The Mitakshura on the contrary, following the order of succession laid down in it, holds that on failure of all as far as Nephews to inherit, the first Heir among the next, or Gentile, Relations, is the Grandmother, and if none, then the Sumanu Gotru Supinda, or Relations within the seventh degree, viz. his Grandfather, Uncle and Nephew, in order, to the great grandmother, great grandfather, and his son, and his son again in order, thus through the Sumanu Gotru, to the seventh degree.—In case there be none of these, then through the Sumanodukus from the 8th to the 14th generation of the Male line. (1) Under the word Bundhoo, the Author has included as Supindas, the Usugotrus also, wherefore, should there be neither the above named Relations nor yet the Bundhoo, or Cognates on his side, then the children of Rugoonathdas are the lawful Heirs (though not specified by the Author in the text) because they are within the seventh generation, though in the female line.

They said in answer to the second question, Supposing it proved that Jeevun Bhuwanee and Rughoonath, his Sister's son, were partners, then according to the Shastru they would divide the profit and loss exactly according to their agreement, or articles, and after death of either, such his share comes to his Heirs. We know that a partnership agreement was made in 1809 Sumvut, according to which one half comes to the Heirs of Rughoonath, because the shares of that partnership were equal.

Upon the third point. In the way in which the property was conveyed by the Will to Bhugwandas, Dhunkoonwur giving it up during her life time on condition that he should maintain her during her life, and defray her funeral expenses and keep the balance himself, it was not a religious charitable gift—She might have made a Gift, not only of moveable but of immoveable property to Brahmuns, and the Deed would have been valid and legal; but the Gift in this instance was made through partiality, and is therefore improper.—If she gave away the personal property,

(1) Mit. Book second, leaves 58 and 59, Cole. Ch. 1st Sections 5th and 6th. Vide Note (1) to Case No. 43, and Note (4) to Case No. 25, and Case No. 37.

property, the Gift was valid, provided it was not of the nature of obstructed heritage.

Fourthly, If there were a partnership, and Dhunkoonwur gave away through partiality personal property, then, provided it were not the common property of the two partners, the Gift was valid as related to the personal property. If she gave away the property of the partnership, the gift was invalid, because one could not assign away the property of both.

On the fifth question, It appears that an arbitration Bond was given by the parties, and all former di-putes were brought to a decision, by the Arbitrators. Agreeably to their decision, Dhunkoonwur and the sons of Rughoonathdas made an agreement to divide the property left by Jeevundas into 8 parts, by which agreement the Will formerly executed by Dhunkoonwur through affection, is made null and void, since the Mitakshura says, "In all disputes, the "latest transactions are more valid than former ones." (2) To sum up all we have said: Jeevun Bhuwanee and Rughoonathdas were not partners in trade, but related as Uncle and Nephew by the Mother's side. The will is annulled by the agreement in which Dhunkoonwur subsequently agreed to divide the property of Jeevundas into Eight shares. The share which is therein assigned to Gopeenathjee Muharaj must be paid to him, because given for purposes of Religion, since that which is once devolved as a Gift to Brahmuns, cannot be withheld. Another share goes to Bhugwan, for both parties agreed to give it out of affection. The Sons of Rughoonathdas get their own five shares, and also that of Dhunkoonwur, because they are the nearest Relatives according to the Shastr. If the partnership had subsisted, the Sons of Rughoonathdas would have been lawfully entitled to half, and the other half belonging to Jeevundas would have been then divisible according to the agreement,

(2) Mit. Book second, leaf 11th, page 2d, line 2d, Runadanu Prukurnu. Yagnywulkyu, "In all disputes the latest act shall prevail," to which the commentator adds, "Even if the first transaction be established, yet its defender shall lose his cause," Cole. Dig. Int. 417.

agreement, so that Gopeenathjee and Bhugwandas would have only got each a sixteenth of the whole, and all the rest would have belonged to the Sons of Rughoonathdas. Since Appellant *Baee Umroot* had no daughter, she can claim no part of the property of Jeevundas, except that share allotted to Bhugwandas.

Witnesses were now called, who spoke to the removal by Appellant of a great deal of property from the old House to one which she was building next door, and its being subsequently claimed by Respondent Kulyan Bhaee, but kept by Appellant on her furnishing security to the Cast.

The Court, having considered with this suit the claims of the descendants of Dhurmdas, decided, according to the Vyuvustha of the Shastrees, that all the Goods and Chattels of the late Jeevun Bhuwanee which had been attached by the Court, descended to his Widow Dhunkoonwur; that neither Rughoonathdas nor his Heirs had any partnership in these Goods or Estates, neither were they proved to belong to Umbaeedas Ladha; wherefore all the property, as inventoried by the Court, after deducting Costs of suit should be divided according to the answers of the Shastrees in the following manner. The Estates and Immoveable property to be divided into Eight equal shares, one of which to be given to Gopeenathjee Muharaj. The remaining seven shares, with Dhunkoonwur's eighth share of the moveable property, to be put together and again divided into three equal shares. One of these third shares to be given to Respondent Tribhuwan Keeka Shah; Another third share to be divided in two equal parts between Poorshotum and Govurdhun, Sons of Gungadas; the remaining third share to be given to Khooshal Bunmalee. Then taking the seven remaining shares of the moveable property, one share shall be given to Bhugwandas Umbaeedas; and one share to Gopeenathjee Muharaj. The remaining five shares belong to Respondents, including Kasheedas in right of his Father Sheolal. An express reservation

Decree 10th Sept. 1817.

reservation was made in favor of the right of the Heirs of any of the Brothers deceased to receive their share as first allotted, since by the Shastr moveable Effects given to a Relation from affection cannot be claimed again.

Court of Appeal, J. Elphinston, *Chief Judge.* J. Sutherland, *Third do.*

Umroot Baee died soon after filing her Appeal in this Court, and it was thereafter carried on by Bhugwan, her son.

Decree 28th July 1818.

Respondents moved for leave to exhibit the Judge's Decree upon the original claim filed by Umroot against Respondents in the Zilla Court.

Surat Udalut, No. 1141 of 1814. J. Romer, *Judge.*

Appellant in this suit claimed from Respondents Rupees 50,000 as the value of Property left by her deceased husband, and the inheritance of herself and Children, unjustly seized at the suit of Respondents as that of Jeevun Bhuwanee.

The suit was filed on the 16th March 1814, and on the 10th September 1817; the same day on which the Decree now appealed against was passed, the Judge decreed, that it was not proved that any of the property belonged to Umroot, whose suit was dismissed.

Appellant being questioned why she had preferred no Appeal against this decision so directly affecting her, said she had supposed that the larger suit being appealed would supersede the necessity of prosecuting the smaller.

The Court held, that if it had been Appellant's wish to prosecute the question of the value of the Estate, she ought to have preferred an Appeal against the above decision also, but having failed to do so, the matter could not now be agitated. The mode for obtaining the professed object of the present Appeal, "the recovery of the property of her late Husband Um- "baeedas Ladha," would have been by her Appealing from the decision of the Zilla Court in the Case 1141 of 1814, and Appellant, by omitting to do so had virtually acquiesced in that decree. The Court had only to determine the share or proportion

tion due to Umroot from the property of Jeevun Bhuwanee, and not the Amount of his Estate.

The Vyuvustha of the Shastrees accorded with that delivered upon the same questions by the Zilla Shastrees, in both Courts declaring that the Ikhtiyarnamu was valid, and annulled or cancelled the Deed of Free Gift, on the Grounds that the latest was the only valid document of the two. The distribution laid down by the Shastrees held good, and the Zilla Judge's Decree was affirmed, with Interest at 12 per Cent upon the shares receivable by Respondents.

Sudur Udalut, Hon'ble M. Elphinstone, *President*, Sir C. Colville, A. Bell, G. L. Prendergast.

The Court observed, respecting the cause of the present Appeal, that Respondents having procured the attachment of the property in dispute as being that of their deceased Relation Jeevundas, Appellant filed a suit to remove the attachment on the Grounds of the property belonging, not to Jeevundas, but to her own Husband Umbaeedas. This suit was decided against her, and she acquiesced in the decision. The question then was whether Appellants or Respondents were entitled to the property of Jeevundas, and it was decreed that it should be divided amongst them in certain proportions, and it was against this decision the Appeal was brought. The Appellant's claim to it as belonging to her late husband was set aside by the Provincial Court in the first instance, as referring to a different suit, and then examining the grounds of the partition of the property decreed by the Judge, they affirmed it as perfectly just. The Sudur Udalut fully concurred in this decision of the Court of Appeal which was affirmed with costs, and Interest at 12 per Cent per annum.

Decree 5th July 1820.

No. 59.

N°. 59.

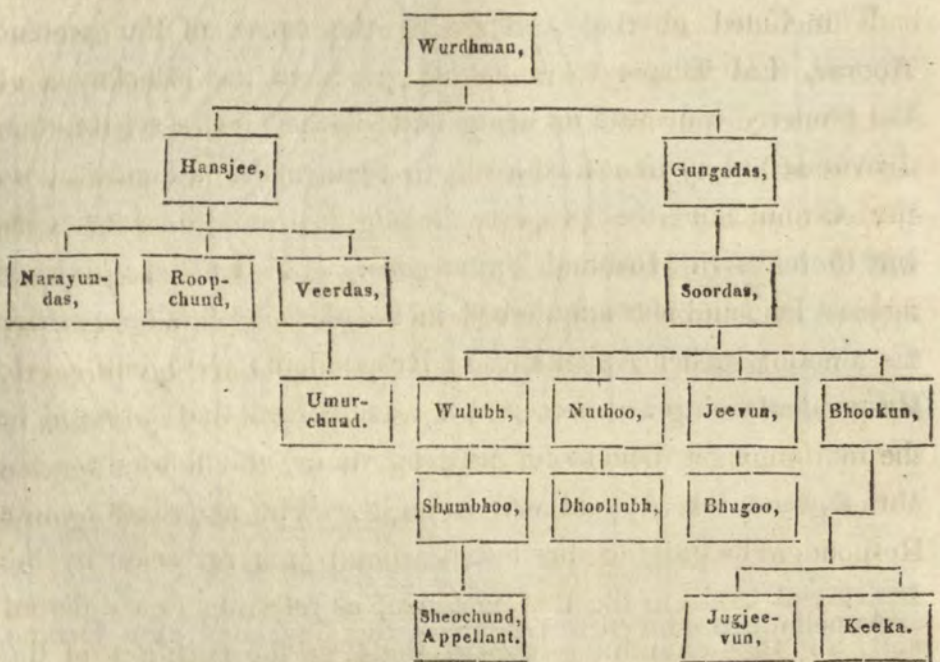
SHEOCHUND SHUMBHOODAS.....APPELLANT,

VERSUS

NIHALCHUND BHAEESHAH.....RESPONDENT.

Surat Udalut, W. A. Jones, *Assist Judge.* Beesa Shreemalee Banyans,

THIS suit was filed on the 28th May 1817 by Appellant in the amount of Rupees 800, to prevent the sale of his share of a House attached at the suit of Respondent. Appellant's Family appeared to be as follows.



Suit by Appellant to prevent the Sale by Respondent of his fourth share of a house, attached at Respondents instance in execution of a Decree, on mortgage of half the house, against the owner of a fourth share conjointly with Appellant.

Execution against the full half, defended on the score of Appellant's possessing no real interest in the house.

Zilla Court Decreed removal of the attachment from Appellant's fourth share.

Court of Appeal and Sudur Udalut

The house in dispute was bought by Soordas, since whose death, Bhugoo had taken his share of the Estate, as had the Sons of Bhookun. The remaining half remained undivided between himself and Dhoollubh, and Respondent having some claims against the latter, had caused the house to be attached, and was about to get it sold, to prevent which Appellant therefore came forward to claim exception for his own share in it.

Respondent answered, that neither Appellant's Father nor Grandfather ever laid claim to the house in question, which had been

been for near a Century in possession of the family of Dhoollubh who had transferred it in mortgage to himself, Respondent. Appellant's Father also filed a claim against him once before for a piece of Ground, but had on that occasion lost his action. In support of his title, Respondent exhibited Copy of a Decree passed in his favor on the 23d April 1817 by Mr. Anderson Assistant Judge, against Dhoollubh Nuthoo.

upheld the attachment because the mortgage to Respondent was a fair transaction made for the benefit of the family, and to be first satisfied.

Respondent filed this Suit to recover from Dhoollubh Nuthoo the sum of Rupees 1,587-2-50 Principal and Interest due on a duly registered mortgage Bond and rent Bond of the House in dispute and 6 Shops, dated A. H. 1225 or A. D. 1810. He had included in the suit three other persons Wunmallee Moorar, Lal Bhaee Chumeldas, and Narayun Bheeka, who had hindered him from taking possession. The Court held, that he was at liberty to sue either the mortgager or the persons who ejected him, but not all together. The claim against the latter was therefore thrown out as he had not proved his case against them. Dhoollubh Nuthoo, the mortgager, was adjudged to pay the amount sued for with Costs, and receive back his property, Respondent being at liberty, in case of default of liquidation of the mortgage by Dhoollubh Nuthoo, to sell the house after due notice given, when the other Defendants might file a suit against Respondent to stop the sale.

Appellant produced three papers, the first copy of a Decree of Mr. Bourchier, Assistant Judge, dated 20th September 1809, in favor of Jugjeevun and Keeka Sons of Bhookun, son of Soordas, against Dhoollubh Nuthoo, for Rupees 2000-0-00 value of their shares of the Estate of their Grandfather Soordas. The Decree was founded upon an award of Arbitrators to whom the suit had been referred, and who decided, " that the Plaintiffs " should receive Rupees 1,401, from Dhoollubh Nuthoo, pro- " vided they were unwilling to live in the house with him, but " if they remained in the House, which was in the award " said to be mortgaged for Rupees 1,500, the Plaintiffs should

" only

" only receive Rupees 1,026." Second, a Deed of sale of the house by Deochund, the Son, and Phool, the daughter, of Nuthoo, for the sum of Rupees 350, to the four Sons of Soordas next door neighbours of the sellers. It was dated 2d Moohurrum (3d Jooloos) A. H. 1164, or A. D. 1749. Third, A mortgage Bond, dated 25th Rubee Ool Uvvul (7th Jooloos) 1130 Hijree, of three shops for Rupees 1,050, by Naranyundas and Roopchund sons of Hansjee, and Ummurchund, Son of their Brother Veerdas, to Soordas, their cousin.

From the evidence of the sons of Bhookun, it appeared that they received Rupees 1,063, from Dhoollubh in satisfaction of the Decree in their favor, and that he raised the money by mortgaging the House to Respondent. They corroborated Appellant's statement that he had received no share of the Estate, to a *fourth of which* he was still entitled.

Respondent then exhibited a Decree of Mr. Ramsay dated 3d October 1800, upon a claim by Shumbhoodas, Appellant's Father, against him, Respondent, which suit was dismissed on the grounds that Respondent was purchaser of the land disputed, under a Deed of Sale of the 5th Vyshakh Sood A. S. 1846, or A. D. 1790, executed to him by Kulyandas Soordas, against whom Plaintiff had established no Right of Inheritance in the property whereby he might challenge the sale.

The Assistant Judge gave a Decree in favor of Appellant for removal of the attachment from a fourth part of the House, to which he was declared justly entitled, as coheir with Dhoolubhdas to the still undivided property of their common Ancestor, Soordas, Respondent to bear Costs.

Decree 26th Jan. 1818.

Court of Appeal,
J. Elphinston, *Chief Judge.*
J. Romer, 2d *do.*
J. Sutherland, 3d. *do.*

Respondent appealed against this decision, and the Court, alluding to the manner in which the amount of the mortgage was employed, viz. for the benefit of the proprietors of the Estate, and considering that the Decree of the former Assistant Judge under date 23d April 1817, established the validity of the mortgage,

gage, which was transacted in the most public manner, declared that the claim of Appellant could not interfere with, or be satisfied in priority to, that of the mortgagee, Respondent, in whose favor a decree was therefore passed, reversing that of the Assistant Judge, and declaring attachment to subsist in full force, Appellant to pay costs.

Decree 10th Dec. 1818.

The Decree of the Provisional Court was fully affirmed on further Appeal, by the Sudur Udalut, costs being paid as before by Appellant.

Sudur Udulut, Hon'ble M. Elphinstone, *President*. Sir C. Colville, A. Bell, G. L. Prendergast, Decree 28th June 1820.

N°. 60.

RULYAT, Widow of SHEOLAL, ... APPELLANT,

VERSUS

YAKOOB or JACOB JOHANNES, ... RESPONDENT.

APPELLANT filed her Suit on the 7th January 1817, to cause Respondent to remove an attachment laid at his suit upon her House in satisfaction of a Decree obtained by him against her husband's Nephew Lukmeedas, son of *Girdhurlal* Gopal, or recover damages from him in the amount of Rupees 1,557-2-00 amount value of her Dowry given up to her husband, Sheolal Gopal, in exchange for which he and his Brother *Girdhurlal* had made over this House to her by a writing dated A. S. 1854, or A. D. 1798, under which she had held it till the present time.

Surat Udalut, J. Romer, *Judge*.

Suit by Appellant, a Widow to remove an attachment placed on her house by Respondent in execution of a Decree under mortgage against her Nephew, she urging that her husband and his brother assigned it to her by a prior mortgage now unredeemable by lapse of time.

Respondent said the writing was a Forgery, for *Girdhurlal* inhabited this house, and after him his son Lukmeedas, who mortgaged the House to him on the 5th Rubee oos Sanee A. H. 1226 A. D. 1811 under a regularly registered Bond for Rupees 2,700, which bore the signature of Appellant's son Berujdas Sheolal as one of the witnesses, and this fact alone was sufficient

Zilla Judge under a Vyuvusthra of the Law Officers decided in Appellant's favor.

Courts of Appeal and Sudur Udalut held that the circumstances attending the mortgage to Appellant were suspicious, and reversed the Zilla Decree by one in Respondent's favor.

cient to prove that Appellant could have no claim upon the house whatever, and he prayed execution of his decree against Lukmeedas by immediate sale of the house, as it was going fast to ruin and losing value every day.

He presented copy of the Decree, dated 17th December 1816, which he had obtained for Rupees 4,390-0-80 under the mortgage Bond, against Lukmeedas Girdhurlal, who suffered judgment to go by default.

Appellant exhibited the Note she mentioned in her Plaint. It was passed to her on Monday 13th Jesht Sood 1854, by the Brothers *Girdhurlal* and Sheolal, as a mortgage to her of their Family House, in Security for Rupees 1557-2, advanced to them by her, Rupees 389-1-50 or *one fourth* of which was received by Sheolal, her husband, *the remainder* by *Girdhurlal*; upon this sum interest was to be chargeable at 9 per Cent per annum, the Principal being repayable at the end of 7 years, or the House to be considered as her property. The witnesses to this were Nuthoo Bhaee Huree Bhaee, by the proxy of Bhookun Bhaee, and Oottum Juvehur.

Bhookun Bhaee Nuthoo deposed that he signed the above Note for his *Father* who was sick, after witnessing execution of it by the Brothers. The other witness was a neighbour of the Family, but died 6 or 7 years ago.

Berujdas, the Heir of Sheolal, had been examined on oath on the former Trial, and his deposition was now recorded, to the effect that the signature on the mortgage Bond said to have been passed by Lukmeedas to Respondent was not in his handwriting, and that he neither was present at the execution, nor Registry, of the Deed.

Other persons again deposed to the execution of the Bond by Lukmeedas with the knowledge of Berujdas, who was present also at the Registry and the Court considered the Bond clearly established, and the more fully proved, since Repondent exhibited

exhibited a Title Deed of the House, being a Deed of Sale executed to *Girdhurlal* by a Relation and equal share-holder with himself, named Dhoolubh Mukun, of his half of the House.

The Court then demanded of its Hindoo Law Officers to which of the Deeds in question, the Note passed to Appellant, or the Bond to Respondent, they would give the preference, as the legal and valid Deed, after taking into consideration all the circumstances above stated.

The Shastrees said, the paper held by Appellant, written in A. S. 1854, or A. D. 1790, by *Girdhurlal* and Sheolal, was undoubtedly superior, because the house was delivered over by them in their respective portions, viz. by Girdhurlal, his own fourth, and the half he was proved, by the Deed of sale in Respondent's hands to have bought from Dhoolubh Mukun, and by Sheolal his own fourth, to Appellant in exchange for money due by them to her, and there was a clause in the Note, that should they fail to repay the money at the expiration of 7 years, the house was her property. Now according to the Mitakshura, fourteen days' Grace beyond the time specified would be allowed them to redeem the mortgage, but if that time again were exceeded, the House became the sole Property of the Mortgagee, and it was no longer in their power to remortgage it to another person after the term of redemption had expired. (1) Another view of the case was, that Property under mortgage could not be legally remortgaged to another, (2) and in case the owner, or

(1) With respect to mortgage in general, a saying of Yaguyuwulkyu is quoted in Mit. Book second, leaf 24th, page 1st "That mortgage is totally lost, which the mortgager fails "to redeem when the principal is doubled. That fixed with a term for redemption is lost "on the expiration of the term, but an usufructuary mortgage, is never destroyed" Fourteen days grace are granted a little lower in the very same page, line 11th "Bruhusputi. "In the event of a mortgage lost by exceeding the duplication of principal from interest, "or the term fixed for redemption, the expiration of fourteen days longer must still be "awaited."

(2) The Shastrees, considering each act a bonâ fide one, declared in favor of the earliest, that of the Widow, by the law contained in the remaining half of that couplet of Yagnyuwulkyu.

or his Heirs, should, from covetousness or ignorance, do so, the first mortgagee had a preferable claim to it, if still in the hands of the owner. But if the second mortgagee had gained possession, his claim was then the best. Therefore if neither party had possession, Appellant's claim under the note was preferable, but if Respondent had got hold of the house, his Title to retain possession was strongest, and Respondent's Title would be at any rate best, if he could prove that Lukmeedas bought any part of the house with his own Funds." (3)

Respondent then exhibited a Rent Bond, passed to him by Lukmeedas at the time when the mortgage was executed, and upon which he had received about 100 Rupees. The Court thereupon asked the Shastrees how this would affect the case, and whether Luckmedas and Appellant having lived in the house subsequent to the mortgage would alter it?

They replied, we before said that in case of a double mortgage existing on the same property, possession conveys the best title. The Shastr admits that holding the Bond, and receipt of Rent, are equivalent to possession, but it is proved likewise that Appellant and Lukmeedas subsequently inhabited the house. This fact, joined to the lapse of the Term allowed in the note for redemption of the House, renders her Title undoubtedly stronger than that of Respondent.

The Judge decreed agreeably to this Exposition of the Law,

The

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nyuwulkyu, quoted in Note (2) to Case No. 58, " But in the case of a pledge, a Gift, " or a sale, the prior contract has the greatest force," on which the commentator observes " In these three matters" (of pledge &c.) " the first executed alone is valid, as if a " field were given to one person in mortgage, and any consideration whatever were received " by the owner, and if again he should take up any thing more on mortgage of that very " field from another, then in that case the mortgaged property belongs to the first person " only, and not to the second."

(3) With respect to possession is produced a saying of Narudu in leaf 24th. " Two " kinds of Mortgage are mentioned, of moveable, and of Immoveable property. The vali- " dity of these two also holds only if possesion follows, not otherwise." The commentator quoting the above verse from the 11th leaf, says, " that mortgage which is perfected by " possession, being the first, is stronger; but one unperfected by possession, even if first " executed, is not valid against a subsequent one" (conveying possession.)

that Appellant's Title was fully established, and that the Proceeds in deposit of the sale of the House, (which had been effected on the motion of Respondent to prevent its losing value by decay) being returned to the purchasers, the House should be by him restored to Appellant, Respondent paying his own Costs of Suit and expenses incurred for the sale, and by the purchaser.

Decree 18th Dec. 1817.

Court of Appeal, J. Elphinston, *Chief Judge*. J. Sutherland, *Third Judge*.

The Provincial Court observed that in the note produced by Appellant, no mention was made of the money lent being her Dower, as she had stated in her pleadings, and her unproved assertion would not be admitted. The exposition of the law by the Zilla Shastrees therefore appeared inapplicable to the case. The Judges were of opinion that Appellant's claim was fraudulent, first, because the amount for which the House was given was nothing equal to what might have been raised outside, and to enter a condition that at the end of 7 years the Property should become hers without reserve, for about Rupees 2,850, to which it would then have accumulated, when eleven years after it was mortgaged for Rupees 2,700, was not very likely. Secondly, none of the relatives of the family attested the note, as usual in cases of this nature. Thirdly, Appellant did not hold the Title Deeds, and the Note had every appearance of age, but it looked also somewhat like a leaf extracted from a Book, and part of the bottom had evidently been recently torn off. This must have taken place since the note was written, for the lowest line was torn through, whilst the sides were not worn more than might have been expected. The hand-writing of the body of the note and the signatures of the principals beneath, too nearly corresponded in the formation of the letters to be the writing of three distinct persons. Fourthly, no mention was made of such claim being in existence, until the property was actually attached,, although Appellant might have come forward in defence of her rights, when the notice for the appearance of Lukmeedas in the Suit against him was affixed upon this very house, a period of nearly six years after the Premises had been mortgaged to Respondent, and due legal publicity given to the act

by

by Registration of the Bond, to which she must have been privy, as her Son Berujdas attended as a witness, and the fact was notorious to her neighbours. The House was purchased 27 years before by *Girdhurlal* Gopal, who inhabited it as long as he lived, and since his death his son Lukmeedas had occupied it until 1811, when he mortgaged it to Respondent, delivering up the original Title Deeds. This indicated no change of ownership, and Appellant's son having witnessed the transaction, gave it his, and consequently his mother, Appellant's, consent. They conceived that Berujdas, in denying the mortgage Bond, was guilty of gross perjury, since he had been distinctly proved to have been present when it was attested. The note produced by Appellant was therefore declared to be an invalid document, and the Zilla Judge's Decree in her favor was reversed, Costs of Suit in both Courts being borne by her.

Decree 4th Dec. 1818.

Sudur Udalut, Hon'ble M. Elphinstone, *President.* A. Boll, G. L. Prendergast, Decree 15th Nov. 1820.

The above view of the case by the Court of Appeal fully accorded with that taken by the Sudur Udalut, which therefore affirmed the Provincial Court's Decree and awarded the further Costs to be borne also by Appellant.

N°. 61.

Mt. AESHA, and ROOKHUN, Women, and their Mother REHANA,..... } *APPELLANTS,*

VERSUS

Mt. AESHA, Widow of UBDOORREHMAN, RESPONDENT.

Surat Udalut, W. A. Jones, *Assist. Judge.*

THIS cause was filed by Respondent in the Zilla Court on the 15th March 1817 in formâ pauperis for Rupees 1,500, value of half a house.

Claim by a Moohummudon widow for half a house devised to her by her husband in his Will be-

Respondent said in her Petition, that her husband Shekh Ubdoorrehman Shekh Uboobukur at his death in A. H. 1229 or A. D. 1814, made his Will in which he constituted his half sis-

ters.

ters, Appellants Aesha and Rookhun, and herself, his Widow, joint heirs to his property, naming Shekh Alee Khuteeb and Nakhuda Shekh Hamud Kutne, Executors to the Will, which he delivered into their charge. In this Will the Testator declared that Respondent should have half his house in the Suyud Waree, the one in question, to live in, and Sundry Ornaments and Household Furniture over and above the share allowed her by the Moohummudan Law on account of her Dower. She had lived in the house for five years after her husband's death, but was driven from it by the quarrels and opposition of all three of the Appellants eight years ago, since which time she had lived separate. She had demanded her share, and the Executor, Shekh Alee, was about to get the property divided, when he unfortunately died, and the other Executor named in the Will, being the husband of Appellant Aesha, could never be brought to give her up the property. She therefore claimed her half of the house now, intending hereafter to sue for the personal property bequeathed to her.

yond the share belonging to her by Law.

Defence that Respondent had received its value on the general division under the Will.

Zilla Court dismissed the suit, but the Provincial Court and Sudur Udalut reversed that decision, on the ground that the half house was distinct from the Share belonging by Law to Respondent, for which alone her acquittance was to be taken against her, and the half house was decreed to her as sued for.

Appellants pleaded that after the death of the first Executor, and another named Shekh Ulee Hada whom Respondent had not mentioned, the surviving Executor Nakhuda Shekh Hamud, had in A. H. 1226 or A. D. 1811 made a division of the property agreeably to the Will, and gave to Respondent her full share, for which she had passed a Farighkhut, and as half the House was sold at the time of the division, Respondent had nothing now due to her. They had a claim against her again for clothes and Ornaments, part of the property, kept by her and not divided.

The Executor being called, stated that he had exhibited the Will in the Assistant Register's Court, in a Suit of his against Respondent. He handed up the Release mentioned by Appellants, and the Will was likewise produced from the Records of the Assistant Register's Court. Witness deposed that he took possession of the estate of the deceased Ubdoorrehman, and made a

regular

regular Division according to the Provisions of the Will, paying to Respondent the amount due to her under it, Rupees 1,500-0-75 for which her Wukeel Shekh Ulee Buldaram had passed his receipt, which with his Wukalutnamu, witness had filed in his suit in the Assistant Register's Court.

The Farighkhut, dated 14th Shaban A. H. 1226 or 3d September 1811 purported to be a full acquittance by the Wukeel on the part of Respondent, "Of the property left by Respondent's "husband at his death, consisting of Cash, and Gold and Silver "Ornaments, and houses, Goods and property of all sorts, and "of great value, which descended to him from his Father. Alee "Buldaram acknowledged receipt of Respondent's share of all "these, and of whatever else was set aside for her use by her "husband at his death, being in value Rupees 1,374 and her "Dowry Rupees 125 total Rupees 1,499, and declared his client "had no further claim against the Executor or the Estate."

The Receipt, which was dated three days prior to the Farighkhut, and bore Respondent's mark, was given for Rupees 1,679-3-25, being payments made by Shekh Hamud, Rupees 1,005-3-50, by the other Executor Shekh Ulee Khute Rupees 100, from Ulee Buldaram Rupees 406-1-50, and Sundries Rupees 167-2-25.

This receipt was proved by the witnesses, as were the Wukalutnamu and Farighkhut, which latter document was denied by Respondent. Ulee Buldaram said that the house in question was valued with the other goods, and one fourth of the whole was paid to Respondent.

The Court found, that the property of Ubdoorrehman was divided according to the Will, and that the house in dispute being thrown in with the rest of the property, Respondent had received her fourth share of the value of the whole, as was proved by the Farighkhut and by the witnesses, and Respondent's claim was therefore decreed unjust, and dismissed accordingly.

Decree 28th Feb. 1815.

Respondent,

Respondent, in her appeal to the Provincial Court, pleaded that her husband made over the half house and Ornaments and Dowry Rupees 125, to her as a Gift, quite distinct from the rest of the property, and the Executor had no right whatever to mix up these with the rest, when he made the division, for Legacies were undoubtedly to be first paid, and in proof of this quoted the concluding words of the Will "after executing the "provisions of this Will, whatever remains shall be divided "among the Heirs." She admitted the Farighkhut, saying it mentioned the Dower and fourth share only, and pleaded that no mention was therein made of "half a house or its value re-"ceived." She quitted the house, in which she long resided, upon her second Marriage, but left her mother and servant living in it until Appellants ejected them.

Court of Appeal.
J. Romer, 2d Judge.
J. Sutherland, 3d do.

The Court observed, that the division under the Farighkhut pertained only to the share willed to Appellant as one of the joint Heirs of her husband, and did not affect the half of the house, made over to her as a donation by her husband, respecting which there was no dispute at the time of passing the Farighkhut, as Respondent then resided on the premises, and it was not till some time after that she was dispossessed. The Moolummudan Law officers had declared, that their Law did not allow Bequests, made as such, under a Will, to Heirs, but it recognized Nuzzurs or Gifts similar to that recited in the Will. They had also given their opinion that the Farighkhut or Release did not extend to, nor was intended to have the effect of, relinquishing the Respondent's right to the half of the house received in donation from her husband.

This was recognized by the Will to be a free Gift to Respondent, and as there was no proof that she ever transferred her right by giving it up to be divided among the Heirs, nor that she in any way legally alienated it, she, Respondent, was in the opinion of the Court, clearly entitled to recover. The decision of the Assistant Judge was therefore reversed, and a decree passed,

Decree 18th March 1819.

ed, that Respondent should be put in possession of the half House, as recognized to be a free Gift to her under the Will of her husband; Appellants paying all costs.

Sudur Udalut, Hon'ble M. Elphinstone, *President*, A. Bell, G. L. Prendergast.

The Judges observed, the fact (that the half house was sold, and the value included in the property divided, of which the Respondent received a portion) which was the ground of the Assistant Judge's decision, was not proved. Had it been true, much better proof than the mere evidence of Ulee Buldaram would have been produced, and much better was required, to prove so improbable a statement. The Decree of the Court of Appeal was affirmed against Appellants with Costs.

Decree 5th July 1820.

Note. The Will is not to be found in any of the Proceedings of the Suit.

N°. 62.

WUJOO BHAEE HURREE PRUSAD and his Son, ... } *APPELLANTS*,
RUGHOONATH WUJOO BHAEE, ... }

VERSUS

JAEE BHAEE WUJEHRAM, ... }
and }
JUGGUNESHWUR SHEO BHAEE, ... } *RESPONDENTS*.
or }
The Firm of WUJEHRAM BALKRISHN, }

Broach Udalut, T. Barnard, *Judge*.

Suit for the balance of an account current of old standing acknowledged yearly by Appellant's Father, and son.

RESPONDENTS filed a suit on the 26th January 1818, against Appellants to recover from them the Balance, with interest, of a Samedustkhut, or adjusted account. They said Appellants both Father and Son, came to their Shop in A. S. 1867, or A. D. 1811, adjusted their Account, and the Balance which then appeared against them was Rupees 1,010-2-50 and Rughoonath signed this with his own hand in acknowledgment. This was carried

carried on in Account from year to year up to A. S. 1873 or A. D. 1817, and payments had been made by Appellants on the different Diwalees (Last day of the year of the Vikramujit æra) amounting to Rupees 10. The Respondents now sued for the balance Principal Rupees 1,000-2-50, and interest Rupees 871-0-00 at 12 per Cent, making the amount sued for Rupees 1,871-2-50.

Pleaded that the first acknowledgment within the twelve years, was null, as fraudulently obtained from the son, a child, during the absence of the Father.

Courts held that the act of the son, in striking Balances, for different years, of Debts contracted for the service of the Family, rendered both responsible, and the Principal sum sued for was decreed against them with interest equal to the principal.

Appellant Wujoo Bhaee Huree Prusad, answered, that he neither adjusted nor signed the account on which he was sued. From A. S. 1848 or A. D. 1792, to 1866, he had a running account for cash taken up for the use of his Family with Respondent's House, the principal of which, Rupees 820, he paid, leaving the interest unliquidated, but that was 24 years ago. His son had during his absence at Cambay in A. S. 1869 been induced by Sheo Bhaee, deceased father of Respondent Jugguneshwur, to sign the account, though perfectly ignorant of, and unconcerned in, any dealings with them. He said he had attacked Sheo Bhaee about this deceit on his return.

Appellant Rughoonathdas said, what his Father had declared was perfectly correct; he was young and ignorant and wished much to avoid signing the account, but they persuaded him it should be shewn to his Father when he returned, and would not be valid without the latter's signature.

Respondents said it was not done once, but every year up to 1867, by both Appellants, the son also signing it, since it was proper he should know of his Father's debts, being his Heir.

The Court, examining the account, and cross questioning the parties, found that in A. S. 1859 or A. D. 1803 there was a Balance of Rupees 542-2-,, signed by Wujoo Bhaee, and allowed by him; as also that payments were admitted by him as late as A. S. 1864 or A. D. 1808. Rughoonath admitted his signatures to the Account Balances drawn out yearly in his Father's name from 1860 to 1867. Of the balance of A. S. 1859,

1859, Rupees 410 were admitted by Respondents to have been received, but Appellant Wujoo Bhaee would not admit receipt of an advance of Rupees 295, in 1861. This was not allowed therefore by the Court, which decreed to Respondents the sum of Rupees 543-3-0, Principal and Interest due in account up to date of the decree, and their costs of suit from Appellant Wujoo Bhaee.

Decree 30th March 1863.

Court of Appeal, J. Romer, 2d Judge. J. Sutherland, 3d do.

The Judges of the Provincial Court, on this case coming before them, held that the act of the son striking balance in an account standing in the name of his Father, for money bonâ fide taken up for the use of the family, being undivided, was good and valid, and rendered them both responsible. The balance struck by Appellant Rughoonath in A. S. 1867, or A. D. 1811, was therefore found to be a debt justly due by both Appellants with simple interest at 12 per cent, up to the date of the Provincial Court's decree, provided it did not exceed the restriction of Section 4th Regulation 1st A. D. 1814, which declares "that "where the interest on debts, or on money lent, may have accumu- "lated so as to exceed the principal money, the Courts of Udalut "shall not decree a greater sum for interest than the amount of "such principal money." Interest at 12 per cent up to that date, being more than the principal, the sum of Rupees 1,000-2-50 and interest Rupees 1,000-2-50 total Rupees 2,001 1-00 was awarded to Respondents, and the Zilla Judge's Decree was amended. Appellants were ordered to pay all costs.

Decree 23d March 1869.

Sudur Udalut, Hon'ble M. Elphinstone, President. A. Bell, G. L. Prendergast. Decree 15th Nov. 1870.

The Judges of the Sudur Udalut affirmed this decision.

No. 63.

No. 63.

Mt. GOOLAB Widow of GOUREEDAS,.....Appellant,

VERSUS

Mt. ICHHA, Daughter of HURUKCHUND, and Widow of HURJEEVUN WUKUT SHAH,..... } *Respondents.*

THIS cause was filed in the Surat Court to oblige Respondent, who had unjustly and violently seized two houses, to restore them to Appellant, who before held them under a mortgage Bond of A. H. 1232 or A. D. 1817, executed to her by Mulookchund for a debt of Rupees 1,633, of which only Rupees 33 had been repaid up to the date of their seizure by Respondent, the day before Appellant filed the Suit.

Surat Udalut, W. A. Jones, *Assist. Judge.*
Claim by Appellant to recover two houses as mortgaged to her by her own husband, Guardian of (her own son) the adopted son of the widow of Respondent's Father in law, for a debt due by the widow to Appellant.
Court held, that Respondent being by the Shastr the widow's legal Heir, the Gift of the houses by the widow to Appellant's son was illegal and null, wherefore the mortgage to Appellant in right of such Gift was illegal, but she was left at liberty to prove her debt against the widow, recovering in that case from this property.

Respondent answered that the pretended mortgager, Mulookchund, was a minor, and Appellant's own son, and as to their claim to the Houses, they were the property of Wukut Shah Respondent's Father-in-law, to whom she, Respondent, was lawful Heir, and had accordingly resided in them for a very long time.

Appellant explained in reply that one of the houses was decreed by the Udalut as legally inherited property to one Dhunkoonwur, who likewise inherited the other from her husband Wukut Shah. In A. S. 1866 or A. D. 1810 Dhunkoonwur adopted Mulookchund as her son by a Deed of inheritance registered in the Udalut, and being in debt to Appellant in the sum sued for, Rupees 1,633, she enjoined payment of it in her will to Mulookchund, who, not having other means, mortgaged the houses to Appellant his mother. Respondent's Father-in-law, the husband of Dhunkoonwur, had been dead forty years, and her own husband had also separated from his mother, Dhunkoonwur, and died fifteen years since and Dhunkoonwur died seven months ago. She referred the Court to the claim of

Respondent

Respondent against Dhunkoonwur for her Pulla Jewels, which was dismissed. She then exhibited a mortgage Bond dated 13th Zilkad A. H. 1232, or 25th September 1817, and registered on the 1st October, executed by Goureedas Shookulchund, as Guardian to his Son Mulookchund, then of the age of 14 years, "premising that Dhunkoonwur, Widow of Wukutchund having in her Will, formerly registered in the Udalut, acknowledged a debt to be due by her to Goolab, daughter of Wukutchund of Rupees 1,633, and enjoined her Heir Mulookchund to repay it, he, being pressed for payment, had now mortgaged the two houses mentioned in the Will, through his Guardian, to Goolab."

The Hibbelnamu or Deed of gift, by which Dhunkoonwur constituted Mulookchund her Heir, was dated Sunday 11th Chytur Sood A. S. 1866 or 15th April 1810, and registered on the 28th of the same month. It declared him Heir to *all* her property, consisting of a House bought by her Father-in-Law, and another adjoining mortgaged to the Testatrix, together valued at Rupees 2,200, with all her household property, valued at Rupees 200 more. Out of this property the Heir was enjoined to pay her debt of Rupees 1,633, to Goolab Bace, and enjoy the Balance left. For this consideration the Heir was to support the Testatrix during the rest of her life, and expend *as much as he was able to do* at her death.

This last deed was proved by the witnesses, two of Appellant's relations and a neighbour. One of them, connected with both parties, said Dhunkoonwur willed away her property to Mulookchund in order to disappoint Ichha's expectations, as they were always quarrelling.

The Assistant Judge asked the Law Officers whether Mulookchund, the Grandson, or Ichha, the daughter-in-law, of Dhunkoonwur, was the legal Heir to her property?

They answered, whatever property of Dhunkoonwur's husband

band may have come into her, or her Son Hurjeewun's, possession, devolved after their death to Ich,ha. But whatever Pulla Jewels Dhunkoonwur left are the inheritance of Goolab, and after her death of her Son Mulookchund.

The Assistant Judge then submitted to them the Deed of Gift passed by Dhunkoonwur to Mulookchund, and asked whether by it, the right of Ich,ha was set aside, seeing Ich,ha was childless?

They answered that Ich,ha being the Heiress, as they had before shewn, her Title to inherit could not be set aside by this Deed, which they observed was not in the form of a Deed of Gift.

The Assistant Judge threw out Appellant's claim to the house, as mortgaged to her, because the Hibbelnamu, by authority of which Mulookchund claimed the power to do so, had been declared irregular and illegal by the Law Officers. Decree 21st Sept. 1815.

The Appellant grounded her claim to reversal of this judgment, on the general validity of her claim notwithstanding the mortgage having been declared invalid. The Court asked the Law Officers whether for this debt, of which no clear proof was obtainable except mention being made of it in the Will, which did not bear the signature of the Heir, Dhunkoonwur could legally will away these two Houses to Appellant or not? And if not, whether Dhunkoonwur could enjoin payment of the debt by the Heir from the proceeds of the houses? or, whether the Houses were legally bound for a debt, mentioned in the Deed, but the validity of which was not very certain? and lastly, whether Appellant or Respondent was the legal Heir of Dhunkoonwur? They answered, that the writing by which Dhunkoonwur constituted Appellant's Son her Heir, whilst the Widow of her own son was alive and present, was null and void to all intents and purposes. Dhunkoonwur might lawfully assign this property for payment of her debts, and if it were not directed in writing, Court of Appeal, J. Elphinstone, *Chief Judge.* J. Romer, *2d. do.* J. Sutherland, *3d. do.*

writing, yet the Heir inheriting would still be liable for the just debts of Dhunkoonwur. The Deed appeared a true one, but was invalid under the Shastr. The Debt mentioned in it also appeared to be a just one, and if determined to be so in a Court of Justice, must be satisfied out of these two Houses. According to the Shastr Respondent was, after Dhunkoonwur's death, her Heir, and Goolab inherited after Ich,ha's demise, after whom her son Mulookchund; wherefore, Respondent Ich,ha might possess and enjoy the Real property, the Houses in question, and the Rents, but not mortgage or sell them. From this answer, and the features of the case, the Court did not consider it necessary to interfere with the Assistant Judge's Decree, which was therefore affirmed, Appellant paying all Costs; but, thinking Appellant entitled to relief, from a consideration of the original grounds of her claim as acknowledged in the Hibbehnamu, the Court allowed her full liberty to adduce competent proof of what might, under any further exposition of the Law, be considered to establish the legality of the Debt incurred by Dhunkoonwur, and for which the property of Dhunkoonwur in that case was to be held liable.

Decree 20th April 1819.

This decision was affirmed by the Sudur Udalut in Appeal, Appellant paying further costs.

Sudur Udalut, Hon'ble M. Elphinstone, Sir C. Colvill^e, A. Ball, G. L. Prendergast, Decree 5th July 1820.

N°. 64.

GOOSHTUSP SHAH SUHOORAB SHAH by his Attornies MIHIRWANJEE DADA BHAEE.....
and
EDULJEE MIHIRWANJEE..... } *APPELLANTS,*

VERSUS

KAOOSJEE KAMAJEE HORMUZJEE KALA BHAEE.....
and
SUHOORABJEE MIHIRWANJEE..... } *RESPONDENTS.*

THIS suit was filed by Appellants on the 15th September 1812 to compel Respondents to account for having mortgaged, a House belonging to him.

Surat Udalut. T, M. Keate, *Judge.*

The Petitioner said that he was Grandson and Heir of Raja Nowshirwan, to whom his Attornies were Brother and Nephew and by Raja Nowshirwan at his decease, appointed Guardians of Appellant, and Trustees to his Estate. The house in dispute was left him by the Raja, and Respondents had without any authority from him or these his Guardians, fraudulently mortgaged it to Suhoorabjee Nowshirwanjee Khoya in A. S. 1863 or A. D. 1807 for Rupees 8,100. Appellant was by the burning of one house, left without a home for himself and family, and prayed that the mortgage of this house might be annulled, and Respondents be ordered to recover and restore it to him, together with the amount Rent Rupees 5,315-3-00 from Suhoorabjee. He reserved to himself the right of suing Respondents hereafter for other acts done and for monies to be accounted for by them.

Suit by a Parsee minor through his Guardians, his great uncle & cousin for recovery (together with its Rent) of a house of his mortgaged by two of the Respondents to the third.

Mortgagee sheltered himself under the title of the mortgagers, who defended their act as being appointed Appellant's Guardians by his Grandfather's Will.

Zilla Court annulled the mortgage because Respondents could not produce the Will under which they had acted.

Provincial Court confirmed the act of Respondent's on the grounds of expediency and recognition in former Decrees, of their powers as Guardians.

Respondents, the mortgagers, took exception to the present suit being entertained, because Gooshtusp Shah was only 12 years old, and precluded by nonage from carrying it on. They however entered into a defence of it, saying that Gooshtusp Shah was not Heir of Raja Nowshirwan, as Manuk Baee, Widow

Sudur Udalut reversed the Provincial Court's Decree as regarded the point of Guardianship, considering the natural right of the great uncle and Cousin superior to that of Respondents unconfirmed by any positive Deed. But the mortgagee was by that Court declared responsible in the first instance to Appellant and the Zilla Decree was amended against him for restoration of the house and its Rents or mesne profits.

dow of the latter, was still alive. She and her Brother-in-law, Hormuzjee Kala Bhaee, and Kaoosjee Kamajee, the other Respondent, were appointed Trustees by the Raja, under a Will duly executed by him before his decease, but Eduljee coming to Surat to recover amount of a Decree his Father Mihirwanjee had obtained in the Udalut against the Raja, and which they paid him, obtained from them sight of the Will, contrived to get hold of it, through (Gooshtusp Shah's) Appellant's Mother, Meethee Baee, and they both went to Bombay and there prosecuted Manuk Baee for a Power of Attorney, evidence respecting which was taken for the Recorder's Court by the Udalut, and to which they referred the Court, and to the Decree given in Manuk Baee's favor by the Recorder's Court. With respect to the house, they had mortgaged it by desire of Manuk Baee, and with some outstanding debts, collected Rupees 10,000, of which Rupees 9,500, were spent on the funeral, Appellant Gooshtusp's marriage, payment of Meethee Baee's debts &c.

Suhoorabjee, the mortgagee, rested his defence on the right possessed by the other Respondents, as Trustees nominated by the Raja, to administer his property in any way they pleased. He acknowledged possession of the House, and of the original Deeds.

Appellant replied that his age was 17 years, and whatever it might be, he was Heir of the Estate, as by their Religion the Wife could not inherit her husband's Estate if the Son be alive, and Manuk Baee was not married according to Law, being nothing but a kept Mistress of the Raja. He denied that any Will was ever executed, because no necessity existed for passing one when he, the Grandson, was alive and present, and the story of Eduljee stealing it was entirely false. He prosecuted Manuk Baee in Bombay, not for a Power of Attorney, but possession of the Raja's Estate. The claim was dismissed because no effects lay within the Jurisdiction, and the Respondents then told the same story, but could get no Power for administering,

as

as they could not exhibit the Original Deed. With respect to Suhoorabjee, who denied all knowledge of any one but the Respondents, he had taken the Deed in Gooshtusp's name, after warning duly served by Appellants not to accept the mortgage. Suhoorabjee then admitted the Deed to be in Appellant Gooshtusp's name, but denied receipt of any notice against taking the House.

The mortgage Bond was dated 6th Poushvud A. S. 1863 the 19th Zilkad 1221 A. H. corresponding with 24th of Teer 1176, Yuzdeezurdee or 29th January 1807, written by Respondents as "Trustees duly appointed by the late Raja Now-"shirwanjee for Gooshtusp Shah Suhoorab Shah Nowshir-"wanjee Raja, a minor of 9 years of age." This Bond was found to have been registered in the Udalut.

Respondents likewise exhibited copy of the Will, which constituted them Trustees to the Estate of Raja Nowshirwanjee the Testator, until Gooshtusp, then a minor of 8 years af age, should attain his 21st year.

The Court observed that such a copy of a Will, unregistered, and unattested by the Mooftee, as it should have been, was of no value. Respondents then referred to the evidence formerly taken by a commission from the King's Court, proving the existence of the original Deed, and the seizure of it by Eduljee. But the depositions, of which copies had been kept in the Udalut, by no means proved existence of the Will. Of all the witnesses by whom it was attested, the Respondents alone could shew themselves at all acquainted with its provisions, and their interest in its being proved was too great to render their evidence of weight. Respondent bore no relationship to Gooshtusp, and Manuk-Baee the Widow, appeared never to have been married to Raja Nowshirwan. The persons suing as Attornies for Gooshtusp were his nearest Relations, and natural Guardians, and as such the Court recognized their right to sue Respondents Kaoosjee Kamajee and Hormuzjee Khala-Bhaee, for recovery

of

of the House in dispute and Respondents having failed to shew any satisfactory Title, in virtue of which they had mortgaged it to Suhoorabjee, it was decreed that they should, within one month from date of the decree, redeem it from him, and put the Appellant's Attornies in possession on behalf of Gooshtusp Shah, the two Respondents Kaoosjee and Hormuzjee paying all Costs of suit.

Decree 31st March 1814.

Court of Appeal, G. L. Prendergast, *Chief Judge.* J. Sutherland, 3d. *do.*

Respondents Kaoosjee and Hormuzjee KalaBaee, in appealing against this Decree exhibited the following Documents to support their Title to manage the minor's Estate. Three Decrees in a suit carried through all the Courts, filed by one Khoorshedjee Koonwurjee against the Respondents to recover rent of a house from them, as Guardians to, and Trustees for, the minor, in all which decisions and Decrees Respondents were recognized by the Courts as Guardians. Also, a Decree of the Appeal Court, affirming the Zilla Judge's decision in favor of Respondents, who were in this suit also acknowledged as the minor's Guardians. A letter from Mihirwanjee to Respondents, and admitted by him, warning them against selling or disposing of this House, until liquidation of his claim against Raja Nowshirwan, then pending in the Udalut. Two receipts passed to them by Meethee Baee, for 1,400 Rupees, cash paid her for Gooshtusp's marriage. The receipts were signed in her name by Eduljee. Also a certificate of the proceedings held in the Recorder's Court, upon which Appellant's Attornies' application to administer to the Estate was refused.

Appellant exhibited, a Decree by the Register to the Zilla Court, in a suit brought by Respondents against a Debtor to the Estate which was dismissed for want of a power from him Gooshtusp; this decision was however set aside on Appeal by Judge. A power of Attorney from Meethee Baee, as Gooshtusp's Mother, to the present Attornies. An affidavit made in the Recorder's Court to prove effects lying within the Jurisdiction, and make the Appellant's claim cognizable, but which was dismissed for want of such proof.

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The Court, after duly weighing all the proceedings in both Courts, were of opinion that Respondents had been publicly recognized as managers of the property and Estate of the late Raja Nowshirwan, ever since his death, by Appellants themselves, and were applied to in this capacity by Meethee Baee, through Appellants, for cash to celebrate the minor's marriage. Although they could prove no legal right to the Executorship underthe Will, the Court considered them justified in mortgaging the House to cover the expenses of the wedding &c., as they had not made away with the proceeds, nor affected the minor's right, as Heir, to resume it on his coming of age, and to call on them for an account of their management under the Trust. The Appellant should have brought the claim to issue when the Bond was registered, instead of allowing it to lie dormant for six years. Finally, as Gooshtusp was then 20 years of age, it was more prudent to allow Respondents to continue their Guardianship during the remaining year, than to involve the Estate in confusion by a change of Trustees. The Judge's Decree was therefore reversed, and another passed, legalizing the mortgage made by Respondents, and declaring them entitled to continue to manage the Estate until the minor Gooshtusp should attain the age of 21 years.

Decree 11th April 1815.

The Sudur Udalut after consulting their Reporter Mr. Advocate General H. G. Macklin, held that Suhoorabjee Nowshirwanjee should be made a Party in the defence of the further Appeal in this cause, because he had appeared and defended this suit in Zilla Court. By the Principles of English Law, laid down by that Gentlemen, " the Heir at Law ought to have brought " his action in the nature of an ejectment against the mortga- " gee, whose Title, coming through the mortgagers, would " have been brought to issue at once; and the Title set up by the " latter being that of Executors under a Will, would not in this " case have been valid. The mortgagers ought not to have " been joined as Defendants in this action with the mortgagee, " against whom a Decree should be given to put (Gooshtusp) " Plaintiff

Sudur Udalut, Sir E. Nepean, *President.* Sir M. Nightingall, J. Elphinston,

" Plaintiff as Heir at Law in possession of the House, and mesne " profits, or rents, received by the mortgagee, he bearing " all Costs of Suit, and being left to seek his own remedy from " the mortgagers."

The Court enquired of Dustoor Khoorshedjee Jumshedjee, its Andharoo, or Parsee Law Officer, whether in the case of a person dying intestate, and leaving a Grandson with the wife of a second marriage, by whom he left no issue, the Grandson, or second Wife, were legal Heir to the property.

He answered, if the first Wife of the deceased be alive, she and the Grandson will share the property equally between them. The second Wife will only retain her Dowry, (whatever property she brought from her own House), and the Grandson inherits all the remainder, for he is Heir, though there be no Will in his favor.

The Court decided, that Geoshtusp was undoubtedly Heir of Raja Nowshirwan, and it was equally clear that the Attornies Mihirwanjee and Eduljee, his nearest relations, were the natural Guardians during this minority. Respondent had not proved, nor shewn any rational grounds for the Court to believe, that the pretended Will, constituting them Executors, ever had existence, still less, that Manuk Baee was ever married to Raja Nowshirwan. Neither could the application of the minor's mother Meethee Baee, to the Respondents, who had possessed themselves of all the property, for some part of it to defray the minor's marriage and other expenses, be held to invalidate his rights. The reasoning of Respondents, that they were not responsible, or accountable at the suit of the minor for the disposal of his property till after he came of age, could not be admitted. Under these views, and a consideration of the Law of England as stated by the Reporter, the Sudur Udalut set aside the decision of the Provincial Court, and decreed that the House in dispute, with the mesne profits, or rents, received by the mortgagee, Suhoorabjee Nowshirwanjee, be by him delivered

Decree 18th Dec. 1816.

livered and paid into the hands of the Heir, Gooshtusp Shah, then of age, the said Suhoorabjee paying Costs of suit in all the Courts. Execution of this Decree was certified to have been made by the Zilla Court, under date 24th January 1817.

Subsequent proceedings, including the point of Jurisdiction between the Recorder's Court and Sudur Udalut.

On the 27th January 1817, the Respondents in that Suit presented a Petition to the Sudur Udalut for leave to Appeal against their Decree to his Majesty in Council, to which Petition answer was given on the 30th that the prayer of it could not be complied with, since by Regulation 2nd of 1813 (being a Regulation for repealing Regulation 4th of 1812, " which had authorized " Appeals from the Court of Sudur Udalut to His Most Excel- " lent Majesty and his Most Honorable Privy Council," and for repealing so much of Regulation 7th of 1812 as related also to Appeals from the decision of the same Court " because doubts had " arisen as to the legal competency of this Government to admit " of Appeals from the Decrees of the Sudur Udalut to his Most " Excellent Majesty in Council under the present Statutes of the " Realms,") an Appeal to the King in Council from any Decree of the Sudur Udalut was prohibited. This Petition was endorsed by E. W. Hunt Esquire, Register to the Court of the Recorder, as filed on the Equity side of that Court, and read in Court on the 3d February 1820.

On the 19th February 1817, Appellant's Wukeel presented a Petition to the Sudur Udalut, stating that Respondents had filed a Suit in Equity on the 4th January, then last past, against the Appellant and his Guardians, in consequence of Appellant having, about twenty days previous, proceeded to Surat and obtained execution of the Sudar Udalut's decree in his favor. The Petitioners prayed that the Honorable Company's standing Counsel, Mr. Macklin, and their Solicitor Mr. Morgan, might be allowed them to defend the Suit in the Recorder's Court as they were too poor to do it themselves. The Court advised them to entertain Mr. Grant, Counsel for Paupers, but it appeared that this Gentleman was already entertained for the opposite party.

Injunction

Injunction issued on the 4th April 1817, from the Recorder's Court, against Appellant, as an inhabitant of Bombay, as follows: George the Third, by the Grace of God, of the united Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, to Gooshtusp Shaw, Sorab Shaw of Bombay inhabitant, Greeting. Whereas a Bill of complaint hath been lately exhibited in our Court of the Recorder of Bombay, in a Cause wherin Hormuzjee Kalla Bhaee, and Byram Shah Kawasjee are the Complainants, and Gooshtusp Shah Sorab Shah, Meetee Wow, Mihirwanjee Dada Bhaee and Eduljee Mihirwanjee, are the Defendants, praying, amongst other things, that you, the said Gooshtusp Shah Sorab Shah, might be restrained from taking possession of the Dwelling House, in said Bill mentioned, mortgaged to Sohorabjee Nowshirwanjee, and from all other proceedings to inforce payment of any profits, rents, costs, and sum of money mentioned in the Decree of the Sudur Udalut in said Bill, also mentioned, until an account be taken of the Estate and Effects of the late Rajah Nowshirwanjee of Surat, deceased, which have come to the hands and possession of the Complainants, and that they might be otherwise relieved touching the matters complained of in their said Bill. We therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said Gooshtusp Shaw Sorab Shah, under the penalty of Rupees Ten thousand to be levied upon your Lands, Goods, and Chattels, to our use, that you do from henceforth altogether absolutely desist from taking possession of the said Dwelling House, mortgaged as aforesaid to the said Sohoorabjee Nowshirwanjee, and from all other proceedings to enforce payment of any profits, rent, costs, and sum of money mentioned in the said Decree of the Sudur Udalut, until an account be taken of the Estate and Effects of the said Raja Nowshirwanjee deceased, which have come to the hands and possession of the said complainants, and until you, the said Gooshtusp Shah Sorab Shah, shall have answered the said Bill, and our said Court shall make further order. Witness Sir Alex-

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ander Anstruther, Knight, Recorder of Bombay, aforesaid, the 4th April 1817, and in the 57th year of our Reign.

This injunction was served on Appellant at Surat on the 22d April 1817, on which date he complained against it by Petition to the Judge, and also that the messenger had arrested him under this summons in the street, and ordered him to quit the House in dispute, and made a disturbance. Appellant said he had appointed Mr. Macklin and Mr. Morgan his Attornies, in Bombay, where they would answer for him.

The Judge forwarded this representation, with the summons, to the Court of Sudur Udalut, who laid it for report before Mr. Macklin.

That Gentleman said the Document in question had been mistaken. It was an Injunction, and not an Attachment, or arrest of the person. It commanded the Appellant not to do that which was already done before the Injunction was served on him. If the officer had abused his power, as stated, he might be punished for assault, or false imprisonment. The extent of his duty was to serve the Injunction on the Appellant. As to the Recorder's Jurisdiction, when any person is once fairly brought within it, either by appearing in person, by Attorney, or by operation of Law, the process of the Court runs through all the provinces subject to this Presidency, where the Defendant may be resident, or have property. In the present instance, the Defendant's Wife, (a child of tender age) was resident in Bombay, and the process to compel an appearance was served on her, and by operation of Law this is called a good service, and as the Defendant (Appellant) did not think proper to appear, the Injunction issued. The Injunction is too late and perfectly harmless. The Reporter was of opinion the injuries stated in the petition were greatly exaggerated; if however there had been any duress, the officer might be prosecuted as already mentioned.

This

This dispute was continued in the following Suit of

N°. 65.

GOOSHTUSP SHAH SUHOORABJEE,..... ***Appellant,***

VERSUS

SUHOORABJEE NOWSHIRWANJEE,.... ***Respondent.***

Surat Udalut, G. W. Anderson. *Assist. Judge.* Appeal arising out of the last decision, Appellant conceiving himself entitled to the full Rent without deduction from Respondent, the former mortgagee. Courts held that the Balance Rent only was to be considered as the mesne profits to which Appellant was entitled.

THIS Suit was filed by Appellant on the 14th June 1814 in pursuance of the Zilla Judge's Decree, (afterwards affirmed in the above No. 64 by the Sudur Udalut), and by the Zilla Judge's advice, to recover from Respondent rent at Rupees 60 per month for the House from 5th Posh Vud 1863, A. S. or 29th January 1807 A. D. to 5th Vyshakh Vud 1870 A. S. or 9th May 1814 A. D., being 7 years and 1 months, Rupees 5,280, and Interest at 9 per cent Rupees 2564-1, Total amount sued for, Rupees 7844-1.

Respondent totally denied that he ever rented the House, or that any thing was due from him for it. He took it in mortgage from Kawoosjee Kamajee and Hormuzjee Kala Bhaee for Rupees 8,100, as Wukeels of Raja Nowshirwanjee.

The Assistant Judge, to whom the Suit was referred, was about to call the proofs from the parties, when an order for stopping proceedings in this cause, until decision of the Appeal against the former Decree, was received from the Sudur Udalut. In execution of the Sudur Udalut's Decree in that former Suit the Judge, under date 18th January 1817, called up the parties, and examining them, the rent was settled at Rupees 40 per month,

or

or Rupees 4,800, for ten years, from which deducting a payment of Rupees 746 the balance Rupees 4,054, was paid to Appellant by this Respondent, who likewise gave up the House, and paid Costs of Suit Rupees 1,893-0-58. The Assistant Judge being now at liberty to bring on the pending Suit, went into the merits of it, and held that Appellant's claim had been fully satisfied by Respondent, as appeared by the Judge's abovementioned proceedings, and the claim against him was therefore dismissed, Appellant bearing costs, as Respondent could not be twice charged with them in the same cause.

Decree 21st Jan. 1817.

The Appellant further prosecuted his claim, alleging that Respondent had, before the Sudur Udalut, admitted Rupees 60-3-0 per month to be the rent, presenting in proof of this, copy, attested by the Register, of the answer filed by Respondent to the former Appeal in the Sudur Udalut, in which he had declared his intention of suing the Appellant for rent at the rate of Rupees 60-3-0, which Appellant had enjoyed from a Tenant put by him into the House during the time he was in possession under the Zilla Court's Decree.

Court of Appeal.
T. M. Keate, 2d Judge.
J. Sutherland, 3d do.

The Court observed, that no precise grounds appeared, on which the Zilla Judge had fixed the rent at Rupees 40 per month, and it appeared Respondent had in one instance before the Sudur Udalut admitted Rupees 60-3-0 to be the rent, at which rate he had also claimed it from Appellant in a Petition to the Provincial Court, upon reversal of the Zilla Decree in the former cause, for the time Appellant had held possession under the lower Court's decision. The Assistant Judge's Decree was therefore amended, by awarding to Appellant the difference of rent, or Rupees 20 per month, being for 7 years and four months, Rupees 1,760, allowing, however to Respondent, a deduction claimed by him for repairs, to be investigated by the Zilla Judge, he paying Costs, to be taxed upon the amount actually awarded. It was certified in execution, that Respondent having

Decree 5th Dec. 1817.

having been proved to have laid out Rupees 1,069-0-42, the balance Rupees 692-3-58, had been awarded and paid to Appellant under the Provincial Court's Decree.

Sudur Udalut, Hon'ble M. Elphinstone, *President.* A. Bell. G. L. Prendergast.

Decree 15th Nov. 1820.

The Appellant being still dissatisfied at being obliged to allow a deduction on account of repairs, further appealed to the Sudur Udalut, which fully affirmed the Decree of the Provincial Court, the balance rent being all that he was considered entitled to, under the denomination of mesne profits.

O. Woodhouse Esquire, Advocate General, delivered the following opinion on these two cases on the 25th January 1820. By virtue of the charter, Pages 19 and 20, and the 37th Geo. 3d. Cap. 142. Sections 10th and 11th, jurisdiction is given to the Recorder's Court over all British subjects, resident within the Factories subject to, or dependent upon, the Government of Bombay &c., and over all Natives, *Inhabitants* of the Town and Island of Bombay. Who is to be considered as an Inhabitant of Bombay, (being a Native) for the purpose of making him subject to the Jurisdiction, may be a matter of question where the domicile of the party does not appear to be decidedly on the Island. In a recent case, fully reported in the Courier of 31st January 1818, the late Recorder (Sir Alexander Anstruther) decided that all the Natives being in Bombay, whether Inhabitants of Tannah or Bagdad, provided they came there voluntarily, are subject to the Jurisdiction, and that the inhabitancy in Bombay necessary to give Jurisdiction over any Asiatic stranger, must be taken to be the same sort of Inhabitancy which gives Jurisdiction to the Courts in England over strangers arriving there, and that the permanent Inhabitants of the British provinces in India could not be distinguished from other strangers. In all cases where the Court of the Recorder has acquired Jurisdiction of the party, and a suit is thus legally instituted, every species of process against the person or property of such party,

party, is legally serviceable in any of the territories subject to, or dependent upon, the British Government, where the person or property may be discovered. The execution therefore of such process in such a suit cannot I imagine be opposed, or brought in question, by any of the Provincial Courts or authorities. This relates to process where there is no Suit or Decree between the same parties, and for the same subject matter, in any of the Provincial Courts. If a Suit in any Provincial Court had been instituted, between the same parties, and for the same matter, previous to a suit in the Recorder's Court; or if any Decree had been previously had in any Provincial Court, such pending suit, or such Decree pronounced, might be pleaded in the Court of the Recorder, and that Court would be bound, by those principles of Law under which the Judge is sworn to administer Justice, to give due effect to the matter so pleaded, and to allow the party pleading such matters the full advantage of them, by getting rid of the Suit in that Court. In the (present) case of Gooshtusp Shah, set down for hearing on the 29th instant, the Decree of the Sudur Udalut is insisted upon by him as conclusive against the complainants in the equity suit. The Recorder's Court is bound to pay that respect to this Decree which a Judgment of a Court of competent Jurisdiction is entitled to receive. In the equity suit, are one or two points affecting the nature and effect of the Decree of the Sudur Udalut. One, that the Court of Sudur Udalut is only to be considered as a Foreign Court, and that its Decrees are only primâ facie evidence against the party, and therefore examinable by the King's Courts, which the judgment of an English Court of Record would not be. Another is, that the Decree may be controverted, because the Sudur Udalut refused the party leave to appeal to the King in Council. In this manner the Decree of the Sudur Udalut is brought into dispute, but I see no reason why that Court should be concerned at such a proceeding. It is competent for the party affected by such Decree to attempt to get rid of it by the institution of a Suit in the Recorder's Court, not by way of Appeal,

Appeal, but by bringing the same subject matter, in some way or another, before the latter Court. The other party may then insist on the Decree as a bar to such Suit, in which case the Court of the Recorder will be bound, as before said, to decide in favor of the Decree, if it can be supported on those general principles of Law which govern, not only the Courts of England, but every other Court in which any established principles are admitted as the guide. In the present case, as the Decree of the Sudur Udalut is in question, more particularly as it is sought to be affected by the refusal of leave to Appeal, direction should be given to the Company's Solicitor to aid the defence, the more necessary if Defendant (Appellant) be really unable to Support the expence of defending the Suit.

The case quoted by Mr. Woodhouse is here given from the Courier.

THE HONORABLE THE COURT OF THE RECORDER OF BOMBAY.

MADHOW WISHWANATH,

VERSUS

BALLOO GUNNASETT.

THURSDAY, JANUARY 30TH, 1818.

THIS case was of some importance, as settling the Jurisdiction of the Court.

It first came on, upon a suggestion from the late Sheriff (at the last session,) that the Zilla Judge of Tannah had prevented the execution of the writ, doubting the validity of the writ of the Recorder's Court in his Zilla in this case, and wishing to be informed upon the subject, the defendant being a settled inhabitant of Tannah—The Recorder then said, that the question might be discussed, either upon an application of the defendant, when arrested, to be discharged; or by plea to the Jurisdiction; or on the trial of the cause; or it might be brought on in

in the very unpleasant shape of a proceeding for a high contempt of Court in all who obstructed the execution of the writ; that upon the latter proceeding the Court would hear no objections to the writ, the single question being whether the writ, which had actually issued from the Court, could be disputed and disobeyed with impunity. That the propriety of issuing the writ might be questioned in this Court, but by no other authority, but that he hoped he should hear no more of it in that shape, as it appeared to be merely the effect of misapprehension. Accordingly, the defendant was delivered to the Sheriff; and on the 20th January the case came on for trial. It appeared to be an action on a note for 350 Rupees given in 1812, which was stated and proved to have been given in Bombay, while the defendant resided here. He left Bombay and went to reside at Tannah in Salsette about a year and half ago. It did not appear that he had any house or property in Bombay, or that he had traded here since he went to reside at Tannah. In November last he came one day to Bombay, to the Plaintiff's house, and the next day while he was still in Bombay, the plaint was filed and the writ of capias issued; the defendant escaped to Salsette, and was there arrested a few days afterwards. As it was understood that the Jurisdiction of the Court had been doubted by the Magistrate at Tannah, and the Government, the Recorder directed the evidence to be taken down, for the purpose of allowing an appeal, if desired, notwithstanding the smallness of the demand.

Mr. Advocate General, as Counsel for the defendant, having previously intimated that he meant to question the Jurisdiction of the Court, contended that the Plaintiff should be nonsuited, as not having proved the defendant to be an inhabitant of Bombay. He rested the words of the Statute and Charter of 1797, and on the cases of Nagapah v. Rachumna; and Ramnarrain Fauker v. Chederaulah Nursiah from Sir Thomas Strange's notes of decisions at Madras; and contended that the defendant was not an inhabitant of Bombay within the meaning

ing of the statute and charter, being a settled inhabitant of Tannah.

Mr. Woodhouse for Plaintiff submitted that, notwithstanding the authority of the Madras cases, the averment of the defendant's liability to the Jurisdiction of the Recorder's Court by inhabitancy, was sufficiently proved, by evidence that the contract was made within the limits of the Court's Jurisdiction, and that the defendant was found within the same limits at the commencement of the Suit. That in construing the extent of its Jurisdiction, this Court would avail itself of those general rules of law which govern questions respecting the competency of tribunals. That this case was within the operation of those rules, one of which, in the language of Voet, was the following, that "forum competens sortitur reus, in eo "loco, in quo contractus, vel quasi contractus, celebratus seu "perfectus est, si modo reus illic inveniatur." Voet. com. Pan. vol. 2. lib. 5. Tit. 1. Sec. 73. That the charter of this Court does not, by limiting the Jurisdiction, where natives are concerned, to inhabitants of Bombay, controul the operation of the above general rule;—for the meaning of the term "inhabitants" is not necessarily confined to those who have their domicile or fixed residence in a place, but that in all questions respecting the competency of a tribunal in Suits of a transitory nature, inhabitancy might be predicated, as well of a mere temporary residence within the local limits of the tribunal, as of a domicile, or of a permanent residence within those limits. In support of this proposition, Mr. W. quoted Voet vol. 2. l. 5. T. 1. and Sec. 98 "Considerandum tamen "eos, qui, quantum ad successionem aliosque effectus, domici- "lium per negotiationem, tabernam, nudam habitationem, non "constituisse intelliguntur, nihilominus quantum ad forum com- "petens attinet, illis in locis, dum illic degunt recte conveniri."

The Recorder overruled the objection, stating shortly the grounds of his opinion that the Jurisdiction extended to the case.

No

No motion having been made to set aside the verdict, the Recorder on this day stated that he had, from the importance of the point, looked more fully into it, and should state the grounds upon which he thought the verdict right, upon the correctness of which it was competent to the defendant to take the sense of a higher tribunal. He said that after full consideration, he had no doubt that the defendant was liable to the Jurisdiction, on two distinct grounds; both as having been an inhabitant of Bombay at the time when the cause of action occurred, and also as being actually in Bombay, of his own free will, when the suit commenced, and therefore as being an inhabitant of it for the purpose of Jurisdiction.

That the authorities cited by Mr. Woodhouse were strong to the point ofwhat residence forms an inhabitancy for the purpose of Jurisdiction in general, but the question before the Court was not quite so general, being merely on the effect of the particular expressions used in creating that Court, as determining to what time the fact of residence and of inhabitancy shall be held to relate, within the meaning of the Statute of 1799, and of the Charter granted thereon. That the words in each are perfectly general. The Jurisdiction is given over " inhabitants of Bom- " bay." It is not said whether, the inhabitants of Bombay at the time of the Contract, are meant, or, the inhabitants at the time of the suit, or both these classes. That in determining this question, the history of the British Judicature in India is no less important, as explaining the meaning of the Statute and of the new Charter granted upon the same subject, than the general rules of the law of nations upon the extent of the Judicial authority of each nation. That the first Charter of Justice might be said to be that of Geo I. in 1726, creating the Mayor's Court at each of the three presidencies. By that Charter, Jurisdiction was given over all persons " residing or being in each presiden- " cy, either at the time of the contract, or of the cause of Action " occurring, or at the time of the Action brought." That Charter was afterwards exchanged for the Charter of Geo. II.

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in 1753, by which the Mayor's Court obtained Jurisdiction over all "Civil Suits, Actions, or pleas, between party and party, "which may arise, or that have already arisen" within Bombay, except over Suits between natives, who were left to their native tribunals, if any had happened to exist. By this Charter however, the Jurisdiction over natives was retained in all cases where Europeans were Plaintiffs, and also in all cases where the native parties by their contract agreed to submit to the Jurisdiction. That by comparing the two Charters, it seems manifest that the Jurisdiction in favor of Europeans was retained, by the second Charter, over the same persons, as being inhabitants of Bombay, who by their inhabitancy had before, under the former Charter, been generally subject to the Jurisdiction, namely, those who were inhabitants of Bombay either at the time of the Contract, or cause of action, or at the time of the action being commenced. The second Charter adds a new cause of Jurisdiction, from the express assent of the parties, if both natives; being a source of Jurisdiction connected with the time, and the nature of the contract, or cause of action. That the Statute of 1797, and the Charter of that year, are to be construed by those former Charters, where they are otherwise Ambiguous. They in effect restore the Jurisdiction over native inhabitants of Bombay, which had existed under the first Charter, not indeed by words of reference to that Charter, nor in the same words, but using the most broad and ample words that could be employed. That the Statute and new Charter do not introduce any limitation of the Jurisdiction, to inhabitants at the time of the Suit brought, in exclusion of the inhabitants at the time of the cause of action occurring, but use terms which certainly may include those classes of inhabitants; and that the former class of inhabitants seems to have been even more peculiarly in contemplation, not only from the former Charters, but from those parts of them which are retained in the new Charter.

That the new Charter, 1797, had expressly retained to the Recorder's Court all Jurisdiction which existed in the Mayor's; under

under which clause it is plain that the present Court has, derivatively from the Charter of the preceding, Jurisdiction over all cases between natives where there has been an express assent of the parties. But that when the defendant gave the note now in dispute he was a settled inhabitant of Bombay, and continued to be so for three years afterwards; that as such, under the now existing charter, he was generally liable to be sued in that Court. That his assent to Suits was at that time wholly unnecessary, and that when he, as an inhabitant of Bombay, entered into contract with another inhabitant of Bombay, it is at least presumable that both parties contemplated the Recorder's Court as the tribunal which was to enforce the contract, if broken. But that it would be absurd so to construe the Charter as to make the continuance of the Jurisdiction over those who contracted in the character and state of Inhabitants of Bombay depend, in the event of their subsequent departure from it, upon their having expressed in contract their assent to a Jurisdiction from which, at the time during their inhabitancy, they had no option to be relieved, and to which it must be understood that both parties meant to submit, unless the defendant then meditated to defraud the party with whom he dealt by running away. That a similar conclusion arises from the state of the Jurisdiction over claims of Europeans. That as, under the last Charter of the Mayor's Court, Europeans had a right to sue natives, who at the time of the contract were inhabitants of Bombay, it was clear the same right must exist in the Recorder's Court; for all Jurisdiction of the late Mayor's Court is expressly transferred to it. But if it is plain that in some suits the Jurisdiction applies to those natives who were inhabitants of Bombay at the time of the contract, notwithstanding a subsequent change of permanent residence, the presumption must be, that the general unlimited words creating the present Jurisdiction, " over the inhabitants of Bombay" includes in all cases, and in favor of all claimants, jurisdiction over all who are in that state as to inhabitancy, which gives Jurisdiction over them upon claims of Europeans. That

'That he therefore thought the Defendant was liable to the Jurisdiction, as having been an inhabitant of Bombay at the time of the contract, even if he had never returned within the limits of the Island.

'That it is also clear that one who is an inhabitant of Bombay at the time of the commencement of the Suit is liable to the Jurisdiction, but that it had been questioned whether the residence of the Defendant, for one day and night before the filing the plaint, was sufficient to constitute inhabitancy for the purpose of Jurisdiction, and that he thought it was, the residence here being voluntary on the part of the defendant.

'That the general proposition of law is clear, that liability to the Judicature of any State attaches, the moment that any individual comes voluntarily, and in peace, within the territories of that State. That the Jurisdiction of the Courts of any state over persons, is in its nature two fold; over the nation itself, and the natural born subjects of the state, wherever they may be; and over all persons whatsoever inhabiting its territory, or being actually, for the moment, within the local limits of the state, and being therefore temporarily its subject for the purposes of protection, and of obedience, and of Jurisdiction. That the first branch of Jurisdiction, over the natural subjects of the state, depended principally upon birth; the second, upon locality at the moment. That the duration of residence in any country could scarcely be material to either source of Jurisdiction, although it might be important in some points connected with nationality. That where domicile is in question, as for the purpose of deciding the rights of succession, or where their national character becomes important, as in prize cases, the duration of the inhabitancy is important as evidence of national character, or of domicile, but that even in those cases, if there was clear and undoubted evidence of an intended change of domicile, the residence for one hour, as the commencement of that change, is sufficient execution of the purpose. That it is only from our inability

inability in general to know the real intentions of men, that Courts are obliged to look to the fact of duration of actual residence, as one important proof of intention of settled residence, but that in cases of Jurisdiction as arising from inhabitancy, any intention of change of domicile was wholly out of the question.

He observed that the right of Jurisdiction of the King's Court over a native inhabitant of Tannah when actually in Bombay, is the same as over a native of any foreign country, of Bagdad, or of Poona. That the right of Jurisdiction over all is, their being actually in Bombay; and if the general inhabitant of Tannah coming to Bombay, is to be left to the Jurisdiction of Tannah, the general inhabitant of Bagdad, or of any place not British, must be equally protected from that Jurisdiction, until he has become a permanent inhabitant of Bombay. But that a foreigner arriving in England, for whatever purposes, in time of peace, is immediately answerable in the Courts of the Country for all claims of personal contract, wherever arising; and that there must be some direct, and clear, words to shew that the Court of the Recorder of Bombay, which is expressly declared to have here in general all the authority which the Courts of Westminister Hall have in England, shall not be able to hold Jurisdiction over an Arab or a Mahrattah in Bombay, under the same circumstances in which the Courts at Westminister would hold Jurisdiction over a Frenchman or a German in England. That in this respect, the Courts in India could scarcely be said to be Courts of limited Jurisdiction. For a limited Jurisdiction is an exception out of the general Jurisdiction of the Superior Courts. But there is no Superior Court here, the Jurisdiction of which comes into question. That an Arab or a Poona Mahrattah landing in Bombay is certainly not thereby liable to be sued in the Court of King's Bench in England; that he is only answerable to the Recorder's Court, or to no British Court at all.

That the question was in effect whether the word "Inhabi-

tants"

tants" is so definite and narrowed in its construction, as to withhold from this Court, and from the whole British Authorities, that Jurisdiction over strangers which the law of nations supposes necessarily to belong to the Judicature of every State; but that he was so far from considering this to be the case, that if the legislature had meant to use the broadest words in describing the subjects of the Jurisdiction of the Court, he presumed that it would have classed them in these two divisions, First, the natural born subjects of the King, wherever they might be in India; and secondly, the Inhabitants of Bombay, of whatever state they might be subject.

That the Charter could not be supposed to have been meant to exempt peculiarly from the Jurisdiction of the King's Courts at Bombay and Madras, the native subjects of the British provinces under those Governments who might come to either Presidency, in consequence of any confidence in the system of Judicature which now prevails in those provinces, for at the date of the Statute and Charter of 1797 there was no Judicature at all in the provinces under either of those Governments, except as exercised from necessity by the local authority of the Collector to preserve order and quiet in each province. But that even if the Provincial Courts had existed at that time under Madras and Bombay, the same conclusion must have been drawn, for the law which was to be administered in the Recorder's Court to natives, is the same which the Provincial Courts also are directed to administer, and that it could not be considered to derogate from the merit of the Provincial Judicature to say, that upon general principles it must be presumed that there was greater probability of sound Judgment in the King's Court than in the Provincial. That any native debtor coming into this Island must be presumed to know the legal consequences of his *commorancy* here, and that it ought perhaps to be presumed that he had purposely come within the Jurisdiction of the King's Court, but that it was sufficient to say that the Statute and Charter had made no distinction between

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the permanent inhabitants of Surat or of Tannah, and those of Mecca or of Bagdad, when each comes within Bombay. They are all equally in general strangers, but for the time inhabiting Bombay, and therefore subject to the Jurisdiction.

But that it is essential to merely territorial Jurisdiction, that the party shall have come within it voluntarily, and in time of Peace. That as a person detained by illegal force and then arrested by legal process, would be liberated, so, if a man were by force carried within the local limits of the Jurisdiction of any country, he ought not to be thereby rendered amenable to it. That there might be a moral, as well as a physical force. That he therefore perfectly agreed in the decision of most of the cases upon the subject in Sir Thomas Strange's notes at Madras. Of these, several are collected in Vol. 2 p. 293. The first which he should notice was that of a man, brought to Madras " in " vinculis" by the Government, as a Revenue prisoner, and there arrested by legal process; the suit was discharged. The second was the case of a man forced to that Presidency in order to repeal an administration fraudulently obtained in the Supreme Court behind his back, and who on his arrival at Madras for that purpose, was arrested at the suit of the party whose fraudulent proceedings had drawn him thither. In that case also the proceedings were set aside. But in a third case, where a man who had gone for his health to Madras from a distant province, was sued in the Supreme Court, after being there occasionally for two or three Months at a time during the year, that suit was sustained. That the principal case before the Supreme Court in Volume 2d page 293, that of Ram Narrain Nursiah, was rightly decided against the Jurisdiction, the party never having been at all, for thirty years, within Madras, and although there was some evidence that he had a banksall there, yet that was contradicted, and not believed. That he did not dissent from any of these decisions, although perhaps the first might be questionable; but that he differed from some of the reasoning which the

Judges

Judges at Madras had employed in supporting them, and also from the decision in the case of Boojunga Row versus Chittoo Row in the first volume of the Madras Cases, page 210, where a native residing voluntarily for six weeks at Madras for the purpose of settling the account of a province with the Board of Revenue there, was held to be not amenable to the Jurisdiction of the Supreme Court. That he could not distinguish that residence, from any inhabitancy connected with, or for the purpose of, any other object of limited duration. That in another case, another native who had come to Madras only for the purpose of performing the ceremonies of a deceased relation, had also claimed to be privileged from Jurisdiction, but that claim was not admitted. That he could not distinguish the cases. That where a Suitor, or a witness, is attending a Court of Justice, a privilege is thrown around him "eundo, morando, et redeun-" do," but not when attending the settlement of Revenue Accounts, or even the burial of the Dead.

The Recorder observed, that from the case of Chittoo Row, and from the observations of Sir Thomas Strange in deciding the case of Ram Narrain Nursiah, the Court at Madras appeared to have entertained an opinion as to the import of the word "inhabitant" different from that which he thought belonged to it in the Statute and Charter of 1797.

That he agreed with the Court at Madras in assenting fully to Lord Eldon's declaration in 10th Vesey jun. p. 339 that the construction of the word "inhabitant" in any Statute must always depend upon the nature of the subject. That inhabitancy might refer to residence, or it might be wholly independent of it. That the question must always therefore be, to what particular point of inhabitancy the Statute refers, and for what purposes "inhabitancy" is referred, as defining the description of persons intended by the particular Statute. That he thought the error in the decisions at Madras might be traced to the nature of the cases which had happened to come under discussion there,

there, in all which the question had arisen regarding persons generally resident in the subordinate Madras provinces, and that in construing the Statute and Charter, that Court seems to have allowed its attention to be drawn off by that particular nature of those cases, so as to suppose that the words "inhabitants of Madras" were meant in all cases to point to a contrast with the inhabitants of the subordinate provinces, but that the construction of the Statute and Charter must be such as would equally apply to all strangers coming, for the time, to inhabit Madras or Bombay, for the purpose of Jurisdiction. That he thought the true construction was, to consider the term "inhabitant of Bombay," in the Statute and Charter of 1797, as being contrasted with the other great class of the persons amenable to the Jurisdiction, the natural born subjects of the King in India, whether inhabiting Bombay or not. He said, that some of the cases which this investigation had led him to consider with more attention than he had before given to them, were important to another question which had frequently occurred in the Court. That in the Second Institute p. 702, Lord Coke says, that for the purpose of contributing to county rates under the Statute of Bridges, occupiers of lands, although wholly residing in a foreign country, are assessable as "inhabitants." That this explanation of the word "inhabitants" had been recognized, and acted upon, by Lord Kenyon and by the Court of King's Bench in a question of parochial Assessment, in Seventh Term's Reports 35. In both these Authorities, residency was held to be wholly unnecessary to inhabitancy. That those decisions were not only important to the question immediately before the Court. That his attention having been now drawn to the point and to these cases, he was not satisfied that the practice of absent persons carrying on business within Bombay, by the Agency of Gomastashs, which practice is very usual among the Soucars, or Native Bankers, does not constitute an "inhabitancy" within the Charter for the purposes of Jurisdiction, in cases connected with that trading,

trading, but that whether personal presence could or could not be wholly dispensed with, he was clearly of opinion, that, for the purpose of Jurisdiction under the Statute and Charter of 1797, the inhabitancy necessary in Bombay to give Jurisdiction over any Asiatic stranger, must be taken to be the same sort of inhabitancy which gives Jurisdiction to the Courts of England over strangers arriving there, and that the permanent inhabitants of the British provinces in India could not be distinguished from any other strangers.

That he should therefore consider the later decision at Nisi Prius a rule for future cases, unless his opinion should be corrected by higher Authority.

N°. 66.

KISHUNDAS MULOOCHUND,.....APPELLANT,

VERSUS

NOWROZJEE MUNCHURJEE,.....RESPONDENT.

Surat Udalut, W. A. Jones, *Assist. Judge.*

Suit by Respondent to obtain restoration of a House and Grounds in the Village of Kuttargaon, near Surat, from Appellant, who had taken forcible possession.

Case clearly proved, and Decree given against Appellant in all the Courts.

THIS Suit was filed on the 19th December 1817, by Respondent, in the sum of Rupees 1,000 to eject Appellant from a House and Premises situated in the village of Kuttargaon in the Purgunnah of Chouraisee, bought by Respondent in A. S. 1860 or A. D. 1804, in his Father's name from Nundram, chela or Disciple of Mohundas Balukdas Byragee, for Rupees 525, and held by Respondent from that time until about 6 months ago, when the Estate was seized by Appellant. The damages were laid at the increased, and actual, value of the property in dispute.

Appellant contumaciously refusing to answer, though duly served with a notice to do so, and after being again warned by the Nazir in person, he was not allowed to plead when he appeared for that purpose. Respondent

Respondent exhibited a Deed of Sale dated Sunday 11th Push Vud 1860 A. S. or 24th Rumzan 1218 Hijree, of a piece of Ground with a well and house of seven rooms, formerly purchased by the Seller from Soorjee Runchorjee, and other Zumeendars of the village, and since mortgaged by him to Lukmee Vijaee Jutee for Rupees 350, which having redeemed, he now sold the whole of the Estate with its title deeds for Rupees 525, to Respondent without reserve.

The Tulattee of the village of Kuttargaon proved that the Zumeendars sold the land in dispute to Nundram Byragee in A. S. 1832 or A. D. 1776, and that he sold it again in A. S. 1860, or A. D. 1804, to Respondent.

Several other persons of the village spoke to Respondent's having purchased the land, and proved the Deed of sale. Nundram it seemed built a small muth on it, which Appellant had taken care to repair since he seized the land, and this fact was strongly insisted on by Appellant as proving his Title.

Appellant exhibited a Receipt from the Zumeendars to one Meetha Bhugtee for Rupees 45, as the purchase money of 720 Guz of Ground sold to him by them on the 13th Kartik Vud 1830 A. S. or A. D. 1774, and a paper dated Shravun Vud 1832, by Nundram to Meetha Bhugtee "acknowledging that "the house he then lived in, and another bought in his name "by Meetha, both belonged to the latter, who had permitted "him to reside in them during his life." Likewise two Rent Bonds from Lala Ruttunjee for the house in his, Appellant's, Garden in Kuttargaon. The first was dated 5th Jesht Vud A. S. 1868 or 29th June 1812, and the other the 3d Magh Sood 1874 or 8th February 1818.

These documents were not supported by evidence, as the testimony of the witnesses was vague and unsatisfactory, and they could not even speak to Appellant's possession before the time

time of the seizure that Respondent complained against, which appeared to have been about a year before filing the Suit.

The Assistant Judge declared it proved, that Respondent had actually purchased the ground in dispute according to the Deed of Sale, and also that from the date of the purchase it had been in his possession until Appellant occupied it, about a year and half before that; he likewise had enjoyed the Rent of the ground, as the persons by whom it was collected had proved. The two first Documents produced by Appellant were nothing to the purpose, besides that the handwriting of Soorjee, one of the Zumeendars, on one of them was disproved. Restoration of the ground by Appellant was therefore decreed to Respondent, with Costs to be paid by Appellant.

Decree 12th Sept. 1818.

Court of Appeal, J. Elphinstone, *Chief Judge*. J. Romer, 2d. do.

The Appellant produced in support of his case a Deed purporting to be a Deed of Sale for 45 Rupees of a piece of common land by Soorjee Runchorjee to Appellant himself, dated A. S. 1830 or A. D. 1774, which was immediately declared to be a most suspicious Document, and thrown out by the Court; and as Appellant professed to have nothing further to offer, they dismissed his claim at once with Costs.

Decree 10th June 1819.

Sudur Udalut, Hon'ble M. Elphinstone, *President*. A. Bell, G. L. Prendergast, Decree 22d Nov. 1820.

The Suit was further dismissed on Appeal to the Sudur Udalut, with further Costs to be paid by Appellant.

TRUE REPORTS,

H. BORRADAILE.

APPENDIX.

N°. 1.

Cases selected from the decisions of the Court of Appeal between the time of its institution in A. D. 1806 and its dissolution at the end of A. D. 1820.

LAL BHAEECHUND.....APPELLANT,

VERSUS

MOORAD KHAN KOOTB KHAN.....RESPONDENT.

Kaira Udalut, Robt. Holford, *Judge.*

Suit to recover excess of freight due on a vessel of Respondent, chartered by Appellant for a certain term but kept out beyond it, partly through neglect, and partly owing to detention by Pirates.

Settled on the evidence of merchants, that freight was due for the time lost by neglect, but not for that elapsed during detention of the vessel by the pirates.

THIS was a Suit filed by Respondent in the Kaira Court on the 2d September 1807 to recover from Appellant Rupees 2,224, Freight due by the latter to Respondent for twenty months. Respondent who resided at Gogo, was owner of a vessel named the Edroosee, which Appellant freighted for a voyage from Bhownugur, where she then lay, to Moogda (or Muksooda), Murka, Buruva, and Zanguebar, and back direct to Bhownugur. The voyage to be performed within nine months, or extra freight to be charged for the delay. The terms under which the vessel was taken up were, that Appellant should pay freight Rupees 1,001 for the nine months' voyage, and pay Rupees 20-2-00 per mensem for the provisions (or difference between Harbor and sea pay?) of the crew, consisting of nineteen men; the seamen to be allowed private trade to the value of Rupees 100, paying freight, as usual, for any surplus; the owner, Respondent, to be allowed to ship eight Bales of Cotton and 150 Rupees worth of Cloth, but no more, without paying freight, on the outward voyage, and to return Ivory, and Rhinoceros hides; the seamen to be allowed likewise to return on their outward venture, two Elephants' teeth, and two hides, paying freight on any greater quantity, at a quarter Rupee for each Article; the two Brokers in this transaction to be likewise permitted to ship two Bales of cleaned Cotton. Provision for the

the crew to be sent on board by Respondent, who was not to be permitted to sail in the vessel.

Instead of a nine months' voyage, twenty nine months elapsed before the vessel returned to Bhownugur owing to delay at those Ports, and to the crew putting into Makulla coming home, and staying there near four months. The vessel was after leaving Makulla taken possession of by Pirates off Jaffurabad and carried in there fourteen months after her leaving Bhownugur on this voyage, but afterwards released, as being under the British flag. The claim therefore was for recovery of the difference of freight due, for twenty months.

The Appellant pleaded in defence, that Freight was not payable upon demurrage caused by unavoidable accident; that the vessel was detained at the Ports to which she was consigned, by the moonsoon, was obliged to put into Makulla on her return, and was further detained by the Pirates; that the Cargo having been by them plundered, the insurers had made no demur, but paid down the amount of the insurance, which proved Respondent's claim not to be recognized by custom.

It was urged by Respondent against this, that had not time been wantonly lost the vessel need not have waited for the season opening, that putting into Makulla was a breach of the agreement, and the whole business was fraudulent.

Appellant produced a paper signed by nine Merchants and Boat-owners of Surat, declaring that if the vessel and cargo had returned safe, the freight claimed would have been due, but if she sustained damage, and the insurers paid their ventures, the owners was only entitled to freight for the stipulated time. Some Boat-owners of Gogo and Bhownugur stated the same, in another certificate.

The Nakhoda, and one of his officers, were the only witnesses called, and their evidence was at variance, the latter proving much unnecessary if not suspicious delay, which the former wished to disprove.

It

It was held by the Zilla Court, that nothing had been adduced to invalidate the agreement of Appellant making himself answerable for the detention of the Vessel, and the sum of Rupees 2,000 was awarded to Respondent with his Costs.

Decree 14th November 1807.

The Court, then sitting at Broach, issued a precept to the Judge of Surat to obtain the opinion of the principal ship owners of that place, whether under all the circumstances of the case any, and what, freight beyond the nine months stipulated in the agreement, ought to be paid by Appellant to Respondent, that is, by the freighter, to the owner, of the vessel?

Court of Appeal. J. A. Grant, Jno. Smith.

The answer of five of the most respectable ship owners, Moolla Ubdool Futteh; Muyaram Duyaram; Nagurdas Kishundas; Nowshirwanjee Solce Bhaee, and Uzeez Ullaneh, was, that as the ship had been detained by pirates at the expiration of fourteen months from the date of her sailing from Bhownugur, Appellant could not justly be held liable for the delay caused by it, but must be made to pay for five months, the time elapsing between expiration of the Charter Party and the vessel's capture by the pirates.

The Court, fully coinciding in the equity of this mode of adjustment, amended the Kaira Judge's Decree, by awarding payment by Appellant of the Sum of Rupees 556-0-44, being only five months' freight beyond the nine months agreed for, Appellant bearing his own Costs in the Court of Appeal.

Decree 25th Feb. 1808.

N°. 2.

SHUMBHOODAS RAEECHUND.... .....APPELLANT,

VERSUS

DHOOLUBH POORSHOTUM and others, the Cast of AHMUDABADEE BEESA KHUNDAITA Bunyuns,.... ..... } *RESPONDENTS.*

THE Appellant filed a suit on the 12th February 1808, to recover

Surat Udalut. S. Bourchier, *Judge.*

Excommunication of Appellant for opposition to a Bye law affirmed until he signed the Bye law in token of consent to abide by it.

recover damages for expulsion from Cast, the circumstances attending which were as follows. On Saturday 5th Vaishakh Vud A. S. 1861 or May 1805, the Cast drew up a Bundobust, or Set of Bye Laws, registered in the Udalut on the 14th February 1806, and to this effect.

That any one giving his daughter in marriage to a man beyond the walls of Surat should be deemed an offender against the Government, and against their tutelar Deity Sree Kotha Rungjee, and should be held responsible to the Cast for such act, together with all aiding and abetting him, and that neither the giver, receiver, nor abettor, should be allowed to hold connexion with the Cast.

That all Konkunees who had already betrothed their Children in Surat should, when the Marriage was celebrated, pay the usual sum of Rupees 150, at the Munder of Sree Kotha Rungjee, and give a dinner to the Body corporate of the Cast, (Sahjun Muhajun,) who should then attend the wedding procession.

That visitors (Pahona) Members of the Cast coming from Kulyan and other parts of the Konkun, or from Goojurat, or other country, should be entitled to attend the Feast without any hindrance.

That since many persons now took more as Dowry, than Rupees 262, the old established amount customarily taken on both sides the river Tappee, a full meeting should be held for the purpose of settling it.

That any one henceforth taking a bribe for the fixing of a marriage, should not hold connexion with the Cast.

That if the Bunyuns of Vesma, within the Jurisdiction of Surat, gave their daughters in marriage to other than Vesma, or Surat, people, the Cast at Surat would cut them.

That no one coming from another place to live at Surat should

should be allowed a share in Luhana until he had been five years resident here, and had given Rupees 5 for the benefit of the fund for Cast cooking utensils, &c.

That any one coming from the Konkun to reside at Surat and paying these dues, should be allowed to receive Luhana.

This Bundobust was signed by 146 persons and among the rest by Runchhor Gopal, a cousin of Appellant, who on his part refused to give his sanction to it. After it was passed the daughter of Runchhor Raeechund was betrothed, as Respondents said by Appellant himself, to a person in the Purgunna of Huneem, and the Cast refused to hold communion with Appellant, who in consequence filed this suit for damages, alleging that he had not so much to do with the Betrothal as the Girl's father who was a competent person according to the Shastr, and that as he, Appellant, was not a party to the Bundobust, he was not bound to abide by its provisions.

The Respondents urged, in defence of the Bundobust that it was intended as a remedy for an evil custom daily increasing, that of rich persons sending to other parts of the country for wives (on account of the debauchery of Surat?) whereby the daughters of many poor people were left unmarried; and said in support of the act of excommunication, that Appellant's brother's signing the Bundobust was the same as if Appellant himself had signed it, and that he had broken another article of it by receiving Rupees 1,300, from the person to whom the Girl, only two and a half years' old was betrothed.

A distinction was made by them, between complete expulsion and temporary excommunication, to which alone they said their act in this instance amounted, because they ate with Appellant at private dinners; and Appellant admitted that other Casts of Bunyuns held connexion with him, wherefore the Court admitted the distinction.

The

The Girl's father appearing in Court took all responsibility in this transaction off Appellant, declaring that he himself had received the present of Rupees 1,300.

Two witnesses were called to prove an offer of Rupees 150 by Appellant to the Cast, to make up the dispute.

The evidence of one was by Appellant objected to as being himself a Member of the Cast, and more justly to be termed joint Defendant with the Cast, than a witness.

The Shastrees declared that " the evidence of a member of " a Cast, is not admissible in a claim against that Cast, nor " could the evidence of one person of another Cast, be admitted " to prove the evidence of that member."

The evidence of the partner of another member was declared by the Court, on the verbal opinion of the Shastrees, inadmissible evidence, unless both parties agreed to abide by it. (1)

The Court declared the Appellant to have justly incurred the penalty imposed on him by the Respondents, whose conduct was by no means oppressive or unjustifiable. Their Regulations were deserving of support from the Magistracy, in as much as they tended to lessen and to regulate the expense of marriages, and to put a stop to that extravagance and profusion which led many families into difficulty. Government had directed the Judges to exert all proper influence, with due regard to the prejudices of the Natives, for the attainment of this desirable object. Appellant had not been turned out of Cast, but merely excluded from its General assemblies as having offended against the Body corporate, and it was in his power by making certain concessions, to get readmitted to all his privileges. His claim to damages was therefore dismissed.

Decree 15th April 1808.

Court of Appeal. J. A. Grant. J. Smith.

The Court held Appellant to be unduly injured by the Cast's refusal

(1) Vide note (3) to Bombay Cases No. 25.

refusal to hold communion with him, because he did not subscribe to the Bundobust nor commit the acts assigned as the reason for such excommunication. Viewing the object of the Bundobust as highly beneficial, Appellant as well as twelve others who had hitherto withheld their consent, were recommended to become parties to it. This he agreed to do, and the decision was, that on his signing the Bundobust, he should be restored within one month to his full privileges, or that Respondents, who now agreed to this arrangement, should on their refusal to receive him after this submission, pay the damages sued for, Rupees 1,000.

Decree 1st Sept. 1808.

N°. 3.

BHUTARUK RAJINDRU SAGUR SOORYU, ... } *APPELLANT,*

VERSUS

SOOK SAGUR and HEET SAGUR.....*RESPONDENTS,*

THIS Action was laid by Appellant in the amount of Rupees 1,000, to obtain possession of an Copasura, or Jaen Temple, in Surat.

Surat Udalut.
S. Bouchier, *Assist. Judge.*
Shravuk Bunyuns.

It appeared by the admission of the parties, who were all Chelas, or Disciples of Bhutaruk Oodeh Sagur Sooryu, of Ahmudabad, that Wukt Shah, Cousin of Moolook Shah of Ahmudabad, Seth or Chief of Goojurat Bunyuns, had lately on the death of their Gooroo placed another disciple named Pudum Sagur, on the Gooroo, Godeh Sagur's, Gadee, or Throne, thus constituting Pudum Sagur, Religious Head of all the Bunyuns of Goojurat. Appellant claimed this situation in preference to Pudum Sagur, but finding himself unable to prevail over his antagonist, either at Ahmudabad or at Buroda, the Seat of Government, where he carried his complaint, came to Surat with the

Suit by the Chela of a Sravuk Gooroo to obtain possession of the Temple of his Sect at Surat, in quality of Heir to the last Gooroo.

Dismissed because the seth of the Sect at Ahmudabad was possessed of the sole power to nominate a Gooroo, and had already appointed another person.

the View of being installed in the Oopasura there, subject to the same Spiritual dominion which numbered forty Oopasuras in different parts of the Country under its authority. In this he was opposed by Respondents, who ejected him from the Oopasura with violence and abuse.

The Respondents rested their case entirely on the fact that the Surat Oopasura was equally with the others scattered over Goojurat, subject to the Head of the Bunyuns at Ahmudabad, and that in ejecting Appellant they had only performed their bounden duty to that Head, by upholding his decision in favor of Pudum Sagur.

The Court held that it was not authorized to take cognizance of the subject of dispute, the right to the Goorooship, the seat of which was at Ahmudabad in the Gaeekowar's territory. It was at the same time declared, that if Appellant could establish his right at Ahmudabad, and bring a certificate to that effect from the Muhajuns of that City, he should be put in possession of the Oopasura and confirmed in all the rights and privileges of the office at Surat. As he had a right, in common with all other Chelas of the deceased Gooroo, to go to the Oopasura, and as his ejection from it by Respondents was accompanied with violence, they were ordered to pay all Costs, Appellant waving his claim to damages, as he had lost his Action for the Oopasura.

Decree 12th Dec. 1808.

Court of Appeal. J. A. Grant, J. Smith.

The Court of Appeal also held the right of presiding at Ahmudabad, to be cognizable by the Gaeekowar Government alone, whilst the patronage of the Oopasura at Surat with that of all the others, emanated from the Head of the Sect at Ahmudabad by whom all the inferior officiating Chelas were said to be removable at pleasure. The Court felt itself precluded from interfering, and affirmed the Decree of the Assistant Judge dismissing Appellant's claim, he bearing Costs.

Decree 7th March 1809.

No. 4.

N°. 4.

HURKA SHUNKUR.....*APPELLANT*,

VERSUS

RAEEJEE MUNOHUR.....*RESPONDENT*.

Surat Udalut, S. Bourchier, *Assist Judge*. Khumbaitee Lohar Cast.

THE Respondent filed a suit on the 25th October 1808 for Rupees 1,000 as damages for loss of his wife, Mankoonwur, detained by Appellant under the following circumstances as proved in evidence. The parties had married two Sisters, Respondent residing at Ahmudabad, and Appellant at Surat, where the Mother-in-law went with Respondent's wife on a visit to her other daughter, about 6 years before, took up her abode in Appellant's house, and died there. Respondent hearing of it, sent his brother Ramjee to fetch his wife, but Appellant refused to let her go. An Application was made to the Cast to compel him, but their remonstrances were vain. Appellant however did afterwards send her to Ahmudabad, but the persons in charge of her hid her on the road, and Respondent had great difficulty in getting her back. After living with him about two months she left his house and again came to Surat, where she now lived openly with Appellant who had declared "that he would get Respondent's wife divorced and "would keep both the Sisters, as many others had done be-"fore him." These facts and expressions were distinctly proved by the Patel and several members of the Cast, to have been made use of by Appellant at a meeting of the Cast at the Ullayar Bagh and at other places. Some proceedings were formerly held in the Foujdaree Court on the complaint of Mankoonwur against Respondent charging him, then at Ahmudabad, with ill treatment and claiming a divorce. The Patels of the Cast who were at that time consulted, declared that in consequence of Respondent's absence they could not decide nor grant a divorce, though their Rules did allow of a woman contracting

Injunction granted at the suit of Respondent against Appellant for restoration of the former's wife, whom Appellant had enticed away.

tracting Natra, or second marriage, during the life of her first husband. The Court found that Appellant had enticed away Respondent's wife, and had been the cause of her not returning to live with Respondent, and since Respondent was a fine healthy young man, free from any defect of mind or body which alone, according to the Shastr (1) would warrant a divorce, it was decreed that his wife should be sent back to him on his giving security to treat her with kindness, and that Appellant should pay Rupees 1,000 the damages sued for, and Costs of suit. Respondent had claimed restoration of certain Jewels but they were not decreed to him, as no proof existed of Appellant's having received them.

Decree 12th Dec. 1808.

Court of Appeal, J. A. Grant, J. Smith. Decree 3d August 1809.

The Court fully concurred in the justice of this decision, and affirmed it against Appellant.

No. 5.

*LULLOO BHAEE NUTHOO BAHEE.....*Appellant,

VERSUS

YUMOONA, Widow of BHUGWAN RUGHOO on the part of his son KULYAN BHUGWAN,.....,..... } Respondents.

Surat Udalut, S. Bourclier, *Assist. Judge*

Suit by Respondents to establish their right to be included, as entitled to an eighth share, in a decree given against Appellant in favor of certain persons, coheirs in the litigated property with Respondents who had obtained the whole.

THE action was laid by Respondents in the Surat Zilla Court on the 19th April 1808, to recover Rupees 2,650, their eighth share of the amount of a Decree given against Appellant at the Suit of Laroo Baee, Widow of Bhaee Shah Vishnoodas, formerly Appellant's father's first Cousin and Coparcener. The amount of the Decree was Rupees 21,445, and as Laroo was dead, the money was decreed to be paid to Munohur, Krishnu, Kesoor, and Dhoolubh, her husband's Nephews, and the Heirs to her Estate. Respondents said their rights had been quite overlooked

(1) Vide note (4) to Bombay Cases No. 14.

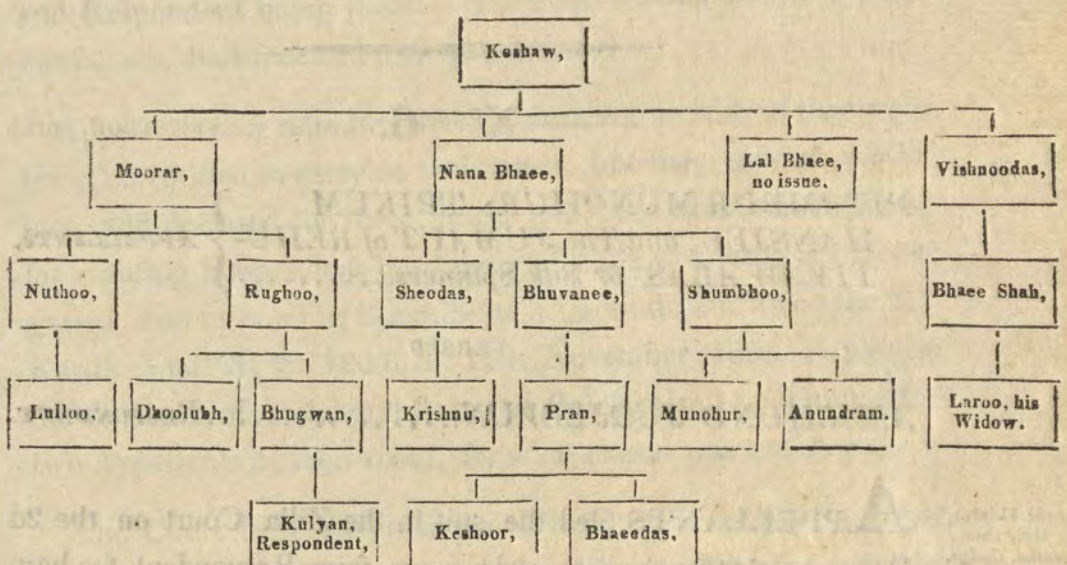
looked in this Decree, and having recovered an eighth share of a house left by Laroo, they claimed an eighth of this Decree from Appellant.

Decreed an eighth to Respondents as sued for.

Appellant pleaded that he had already paid the money to the Heirs of Laroo, named in the Decree, against whom Respondent's claim, if just, now lay.

Decree 17th Nov. 1808.

These four persons were not however the only heirs, who in fact were in number as under :



Under this Table, the property left by Laroo would go in two equal shares to the Families of Moorar and Nana Bhaee, the only two Brothers of Vishnoodas who left male issue. The existing Heirs of Nana Bhaee were provided for in the Decree. Those of Moorar were, Appellant Lulloo, with Dhoolubh the son, and Respondent Kulyan, the Grandson, of Rughoo, and they must get half of Laroo's Estate. But this half must be by them again subdivided, two fourths to Lulloo, and a fourth to each of the other two. Therefore Respondent Kulyan was entitled to one eighth of Laroo's Estate as sued for. With regard to his plea of satisfaction received by the Defendants in the first suit, it was proved by their Examination in Court that the Razeenamu

zeenamu was a mere form, as they had not received nine hundred Rupees altogether, and appeared to have leagued together to defraud Respondent. The sum sued for was therefore decreed to Respondent as his eighth share of the property left by Laroo.

Court of Appeal, Judges as before.

The Court of Appeal consulted its Law Officers who declared that both by the Shastr and Custom of the Country, Respondent Yumoona was, on behalf of her son Kulyan, justly entitled to an eighth of the Estate of Laroo. The Court of Appeal thereupon affirmed the Decree of the Assistant Judge.

Decree 10th August 1809.

No. 6.

PITAMBUR MUNOHUR; TRIKUM HANSJEE; and The JUMAUT of REHUTIYAWALAS, or Silk Spinners..... } *APPELLANTS,*

VERSUS

AMICHUND JUGJEEVUN.....!.....RESPONDENT.

Surat Udalut, S. Bourchier, *Assist. Judge.*

APPELLANTS filed the suit in the Zilla Court on the 2d December 1808, to recover damages from Respondent for having commenced business as a Silk Spinner without paying the old established fee of a certain quantity of Ghee to the Jumaut, before he was at liberty to work at their trade. They said two Brahmuns had been sent to warn him of the Custom, and of his inability to work in the Jumaut until he had complied with it.

Claim by a manufacturing company for an injunction against Respondent for working at their business without being free of the Trade.

Dismissed on proof that Respondent's Grandfather enjoyed the freedom of the Trade, and by Rule his descendants were entitled to work at it.

Respondent defended himself by saying, that his Grandfather had worked at the Trade many years ago, and on his applying for leave to resume the occupation of his forefathers, to Dhoolubh Bhoola, Kaseedas Gopal, and Toolsee Koober, the Patels of the Jumaut, they had granted him permission; and that these persons had the power to admit him into the trade, he proved by exhibiting an Agreement entered into by the whole

Cast

Cast on the 1st Bhadrapud Vud A. S. 1856 or A. D. 1800, binding themselves to maintain and abide by all acts done jointly by those three persons, who were thereby constituted joint Patels of the Jumaut.

Dhoolubh Bhoola and Kaseedas Gopaljee corroborated Respondent's statement, declaring that on his application about three months before, they had instituted an enquiry and discovered that his Grandfather Bucha Vishnoodas paid the usual fees to the Jumaut about eighty three years ago, in A. S. 1781, and Respondent being thereby entitled to resume the trade of his forefathers, had received their permission.

Appellants now admitted that Respondent would, if that were true, be entitled to carry on their trade, but they denied it to be fact, and declared the three Patels had been dismissed by them for granting Respondent the liberty of trade without due investigation, and in proof of it exhibited a paper drawn up on the 7th Kartik Vud A. S. 1865, or 10th November 1808, decreeing the dismissal of Amichund from the Patelaee and appointing the two Appellants in their room, for what reason was not stated.

The Court held this to be an invalid deed, as besides other flaws, it wanted the sanction of the Collector, legally requisite because the Patels were answerable to him for the Mokat due from the Jumaut (Vide decision on this point, in the Appealed cause reported No. 103 Surat Cases).

Appellants, without denying the necessity of such sanction pleaded that the agreement in the former Patel's favor had not received it, but it was proved that it had; and Respondent shewed, by production of the old Jumaut accounts, that his Grandfather's name was entered as one of the Jumaut. Appellants objected that this was no proof of his having paid the Fees, but he Court held that his name could not have been entered until he had also paid the fees, and the objections of Appellants being declared groundless and vexatious, their suit was dismissed.

Decree 3rd Feb. 1809

Appellants

Court of Appeal, J. A. Grant, J. Smith.

Appellants in their pleadings in Appeal particularly urged that the leaf in the old accounts on which Respondent's Grandfather's name was entered was fraudulently inserted in the Book handed up to the Court.

The Provincial Court to ascertain this gave the Book into the hands of Shastrees, who declared that it bore no marks of interpolation, but appeared quite regular.

The Court concurring therefore generally in the grounds of the Zilla Court's decree, affirmed it against Appellants with Costs.

Decree 12th August 1809.

N°. 7.

ATMARAM KESOOR.....*APPELLANT*,

VERSUS

SHEOLAL MULOOKCHUND and UMBARAM DUYARAM..... .... } *RESPONDENTS.*

Surat Udalut. S. Bourchier, *Assist. Judge.* Vesh Sootaree or House Carpenter Cast.

THIS Suit was filed on the 18th February 1806, and at first referred to Arbitration, but as no award was obtained, the Court decided the case. The account given by Appellant was that in A. S. 1859 or A. D. 1803, his Sister Lukmee was by him contracted to Govindram Dholubhram, Brother-in-law of Respondent Sheolal, on condition that he, Sheolal, should either take Appellant to Boorhanpoor at his own expense and get him there married to the daughter of Thakoordas Duyaram, or should give him his own daughter Ichha to wife. On the strength of this contract, Appellant's Sister was given up to Govindram, but Respondents not only refused to take Appellant to Boorhanpoor, but endeavored to get Ichha clandestinely married elsewhere.

Suit to compel performance of the conditions of a contract between the Heads of two families for intermarriages. Contract enforced by the Provincial Court.

Respondent admitted the Contract, but pleaded that it had been actually broken by Appellant's refusing to accompany

pany their principal, Govindram, for whom they declared they were only Sureties, to Boorhanpoor on pretence that he had no money for his expenses. Appellant's marriage with Ichha was to take place only in the event of their failing in the first point, and by Appellant's breach of this first condition, they urged, they were exonerated from performance of the second.

The agreement was signed by Respondents in their own names only, binding themselves to bring about the marriage of Appellant with the Girl at Boorhanpoor, and to give Dower and clothes of the value of Rupees 276, or on failure, from the Girl's non age or other cause, to give him the daughter of Sheolal, who was to bear the expense of Appellant's journey to Boorhanpoor. It was dated 3d Ashadh Sood A. S. 1859, to be executed within three years from that date.

The Court held from the evidence, that Appellant had broken the contract by his refusal to accompany Govindram to Boorhanpoor, and therefore it was not Respondent's fault that he was not married to the daughter of Thakoordas at that place; and it did not appear from the agreement that Appellant was to have his choice of the Girls, but was to go with Respondent Sheolal to Boorhanpoor, and if the latter failed to get him married to the daughter of Thakoordas, he became *then* bound to give him his own. Appellant having broken the first part of the agreement, could not claim Respondent's daughter. His suit was therefore dismissed.

Decree 21st March 1809.

The Court of Appeal referred the case for the report of their Shastrees, who declared, that the contract was valid, and Respondent's attempt to set it aside by charging Appellant with refusal to accompany Govindram on account of poverty, could not be valid (or if true only reverted on his own head?) because it was provided in the contract that Sheolal should bear all Appellant's expenses for the journey, and Respondents admitted that the Girl at Boorhanpoor was little more than one year old at the time, and betrothal of a female at that age was forbidden

Court of Appeal.
J. A. Grant,
J. Smith.

forbidden by the Shastr; (1) from all which they held Respondent Sheolal liable to give his daughter Ichha in marriage to Appellant.

Now Respondents had further admitted in Court that the daughter of Thakoordas died before she was of the age considered marriageable by that Cast. The Court therefore held with the Hindoo Law Officers, that the obligation in that case devolved on Respondent Sheolal to give his own daughter, especially since Appellant had given up his Sister only with a prospect of mutual accommodation. The Decree of the Assistant Judge was therefore accordingly reversed, by one of the Provincial Court, decreeing that Respondent Sheolal should agreeably to the letter and spirit of his Engagement, either give his daughter Ichha in marriage to Appellant, or procure him another Wife, or failing to perform either of these conditions within six months, pay the sum of Rupees 500.

Respondent refusing to surrender his daughter Ichha, and Appellant declining a Bride procured for him because her Dower was too high, Respondent Sheolal paid the sum of Rupees 500 and Costs.

Decree 16th Sept. 1809.

No. 8.

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(1) The Nirnuye Sindhoo on the subject of marriage, says "The time for a Girl's "marriage is declared in the Jotir Nibundhu, Let not a Girl be given in marriage "until completion of her sixth year, because during the two first years Somu (the moon) "enjoys her, then for the same length of time the Gundhurvus, and again in like manner, "Unuluh, the God of Fire." In The Mit. Book first, leaf 9th, page 1st, line 10th, this reason is given, that from Somu a female derives her beauty, from the Gundhurvus sweetness of speech, and purity from Fire.

N°. 8.

RAJA BHAEE and DHUNJEE BHAEE, Borah inhabitants of Peesawara. ..... } APPELLANTS.

VERSUS

HEERA HURSINGH and WURSINGH BHUWAN, CHAORA Patels of Siyoj .. } RESPONDENTS.

Kaira Udalut. H. W. Diggle *Judge*,

THE circumstances of this case, which was filed by Appellants in the Kaira Court on the 12th April 1809 were as follow.

Dispute for the right to the Patelship of a long deserted village repeopled on Kowl by the Appellants on condition of receiving the Patelship, since claimed by Respondents

Decision in favor of Respondents on the ground of possession and ancient title.

The Village of Marookoowa, situated in the Dholka Purgunna, and bounded by the Villages of Peesawara and Siyoj, was deserted, and the First Assistant Collector having during the absence of the Collector received an offer from Appellants to people and bring it into cultivation, if a Lease were granted them, their proposal was closed with as greatly to the advantage of Government and of the village, and a Deed passed on the 24th May 1808, constituting them Patels of Marookoowa, on the conditions they had offered.

Respondents, who had not till then come forward, now claimed the village as theirs, and offered such serious opposition to the Appellants and to Government, that the Collector instituted an inquiry into their claim, and considering possession to have vested in Respondents, consulted the Hindoo and Moohummudan Law Officers of the Udalut on the respective claims of the present parties. The Shastree declared, When the Prince has given a village or other property into the hands of any one, if after he has enjoyed it for any time another person stands up offering more than the former person gave, then, if the former holder engage to give as much as the new bidder offers, the Prince must not give it to the new bidder. This from the words of Sunkhu in the Muyookhu.

The Moohummudan Law Officers said, If a person restore

to

to cultivation land long waste, under permission from the Prince, the cultivator then becomes lord of that land, but not so unless he have received the Prince's permission. This from the Futtave Hummudee and the Shura Wukayu.

The first Assistant's Deed was thereupon set aside by the Collector and a Koul granted by him to Respondents for the village. The present Action was laid to set aside this arrangement by Appellants, who claimed, not the village, but damage for the loss of its profits, the village being said to contain 805 Beeghas according to a survey of Todur Mull.

The Collector and Judge, being one and the same person holding separate Offices in the Judical and Financial Departments, now in his capacity of Judge held that this case being in the light of an Appeal to the Court of Justice from the Collector's decision, the Collector's proceedings could not form part of the present trial.

It was proved on the new trial by the evidence of the oldest people in the country as well as by the best informed inhabitants of the district, the Muzmooadar and Umeens, and by production of old papers, that the village of Marookoowa was raised by portions of land taken from Siyoj, and all the surrounding villages except Peesawara, at the time of Todur Mull; that possession had always vested in Respondents, and never with Appellants until the lease from the Assistant Collector.

The Court then asked the Hindoo Law Officer, how the Law applied to the case?

He replied, He from whom the Prince has received a customary Income for long enjoyment of a village or other property, must not for the sake of giving it to another be deprived of it without commission of some fault; and Respondents have long held possession in the face of Appellants; wherefore it is improper to take the village from them and give it to the other.

The

The Court decreed, that the right to cultivate the lands of Marookoowa should vest in Respondents so long as the just revenues of Government were by them defrayed, and the Abadee or population of the Village maintained, but no longer.

Decree 24th June 1809.

The Court of Appeal concurring with the Judge in his view of the Case both as Collector and Judge, affirmed his Decree.

Court of Appeal. N. Crow, T. Day. Decree 2nd February 1811

No. 9.

BHUGWAN KOOBER.....*APPELLANT*,

VERSUS

HANSJEE NATHA and BHUGWAN RAGHOJEE, with six other Members of the Cast of Goldsmiths..... } *RESPONDENTS.*

THE Suit was filed on the 23d December 1808, by Appellant, claiming damages for loss of Cast. It appeared that he had been to Bombay and on his return to Surat attended a feast given to the Cast by his Father on the death of the latter's Mother-in-law. The Respondents were there, and Appellant's attendance at the Feast was objected to on the grounds of his having eaten in Bombay with one Hemchund Jussa, an outcast member. This charge had been first preferred by Respondent Bhugwan Raghojee to the Cast at Surat, and being called on to substantiate it, he gave in an Engagement taking all proof and responsibility on himself. With this evidence in their hands, the Cast called on Appellant for an answer, but he took no notice of the matter, until the Feast when Bugwan Raghojee charged him to his face wtth the offence, and objected to his ministering as son of their Host. This was the foundation for the present action for damages, Appellant denying, not that he had eaten with Hemchund, but that the latter was at the time an outcast, and calling on all the Respondents to prove it.

Surat Udalut. S. Bourchier *Assist. Judge.*

Suit for damages on account of expulsion from Cast.

Act justified by Respondents, and upheld by the Courts.

The

The Respondents, answering as a Body, denied they had expelled Appellant, or even refused to eat with him, and asserted their right to call for an answer to the charge.

They exhibited a Mehuzur from 29 other members of the Cast, certifying that Appellant had not been turned out of Cast

Respondent Bhugwan Raghojee persisted that his charge against Appellant was true.

The Court held, that Respondents as a Body, had good cause for avoiding communication with Appellant, until he had cleared himself, and they were not responsible to Appellant for what they had done. His action for this purpose lay against Bhugwan Raghojee alone, for bringing a false charge against him. The present action was dismissed with leave to file one for Defamation against Bhugwan Raghojee.

Decree 22d July 1809.

Court of Appeal, S. Crow, J. Day, Decree 9th Jan. 1811.

The Provincial Court considering that Bhugwan Rughojee had by his Engagement rendered himself fully liable, and that the Respondents as a body were not liable, further dismissed the claim against them in Appeal.

No. 10.

PRANKOONWUR, Widow, and HURKRISHUNDAS, Son, } *of Moorardas Bhaeedas* } *APPELLANTS.*

VERSUS

DEOKOONWUR, Widow of BHAEEDAS NAGUR..... } *RESPONDENT.*

Surat Udalut, S. Bourchier, *Asst, Judge.*

THE Suit was filed on the 15th August 1809, by Respondent for a House and maintenance. She said her late husband Bhaeedas Nagur had by her two sons, Lukmidas and Moorardas, both of whom were dead, the latter leaving Appellants, his Widow

Widow and son; as long as her two Sons lived she was well treated, but Appellants had turned her out of the family house lately, wherefore she claimed from them food, raiment, lodging, and Rupees 300 to provide household furniture. The parties it appeared had long been disputing, and an award of arbitration, confirmed by a former Decree, had ensured Respondent a sufficient maintenance. Against the claim for a house, Appellants pleaded that Respondent's husband provided her with one mortgaged to him by a third person, and since redeemed, and she ought to provide herself a lodging out of the sum received in redemption. As Appellants were unable to shew that Respondent's husband had assigned her this house as a lodging, the Court decided, receiving the opinion of the Shastrees to that effect, that Respondent should be allowed a suitable set of separate apartments in the family house, and Rupees 75 to provide herself with Household furniture.

Claim by Respondent for a house & maintenance from Appellants.

Awarded.

Decree 31st August 1809.

This decree was affirmed by the Court of Appeal.

Court of Appeal, N. Crow, T. Day. Decree 14th Jan. 1811.

N°. 11.

KULYANJEE NARAYUNJEE.....APPELLANT,

VERSUS

HUREE BHAEE POONJIYA MOOKADUM, and the other Members of the Company of Vitnars or Gold Thread Manufacturers..... } *RESPONDENTS.*

THE Action was laid by Respondents in the Zilla Court on the 26th September 1809; to prevent Appellant from following their trade. It appeared that Appellant formerly exercised the trade of a Vitnar, but in A. S. 1863 commenced that of a Tarkush,

Surat Udalut, S. Bourchier, *Judge*

Suit by a manufacturing Company for an injunction to Appellant to abstain from working at their Trade. Injunction granted.

kush, or Gold wire Drawer, paying his fees to the Tarkush company and being regularly admitted as a member of their Body. Appellant continuing his employment as a Gold thread manufacturer, the Trade took up the matter, and on 8th Magh Sood A. S. 1864 received from him an agreement, binding himself to give up the Gold wire drawer's business, and to attend to that of Gold thread alone. Notwithstanding this engagement he continued both Trades in his house, and the present suit was filed to compel him to give up the Gold thread manufactory, on the ground that having formally entered the Tarkush Company he had virtually renounced the trade of a Vitnar, as both could not be exercised by one person.

Appellant admitted his having commenced trade as a Gold wire drawer, but declared that he had himself entirely given it up when he executed the engagement to that effect, and never had resumed it. He however confessed that a manufactory of Gold wire was carried on in the house, but by his brother and one Govind, who were in partnership.

It came out in evidence, that the Company of Tarkush or Wire Drawers had also filed a suit against Appellant with a View to make him relinquish their trade, and from Appellant's account with the workmen, it was proved that he had employed them so late as 1st Kartik Vud A. S. 1865, being after the date of his engagement. The Court held that the two Companies rising against him was corroborative of his not fairly observing the Rules of trade. It was a common and allowable practice for two Brothers united in interests to follow two distinct Trades; but as those of Gold wire Drawer and Thread Manufacturer were closely connected, and the two brothers by each following one of these Trades in the same house could play into each other's hands, in a manner contrary to the meaning and spirit of the Rules of the two Punchayuts, the two brothers should be confined to one of those trades, leaving it to them to make their choice.

Decree 30th Nov. 1809.

The

The Court of Appeal affirmed this Decree, adding "so long "as the two Brothers should continue to live in the same house."

Court of Appeal, N. Crow, T. Day. Decree 13th June 1811.

N°. 12.

SUYUD GHOOLAM RUZA.....Appellant,

VERSUS

AJA BHAEE, GOPALJEE and VUNNA BHAEE..... } *Respondents.*

THIS case is reported as eighth among the suits for Landed Tenures decided by the Court of Appeal. The question propounded to the Shastrees by the Zilla Court was, whether possession by Respondents of the village in dispute for a period of seventy six years, including eleven during which it was waste, would bar the claim of Appellant under the ancient grant of it to his family?

Law of the Shastree on the length of possession required to convey ownership without other Title.

They answered "The claim is false, because it is written, "That of which possession has been held, even unjustly by "one's father or by three former occupants, cannot be taken "away if it has gone, in order, through three descents." The Decree was under this opinion given against Appellant, the claimant in the Zilla Court, and affirmed by the Court of Appeal under the following Vyuvustha of the Shastrees, on the question of, how long possession it required to render the right to real property perfectly secure?

"If the owner of Real property, whether land or other, al- "low another to hold it for three generations under any Deed, "without claiming it, such property becomes lost to him, and "ownership accrues to the person in possession. But three "generations may lapse in two or three years, wherefore in the

"Shastree

" Shastree it is provided that the actual possessor's ownership " shall ensue, if the property has been held for any time after " the Smarthu Kal, or extreme age of man. In the Mitak- " shura this Smarthu Kal is fixed at one hundred years. How- " ever Katyayunu and Vyasu state sixty years as the time, tak- " ing twenty for each generation, when three generations may " be said to have passed over, and after which the claim of the " original proprietor is null under any plea."*

N° 13.

DEOKOONWUR Widow of ANOOPRAEE BHOOKUN..... } APPELLANT,

VERSUS

ICHHARAM and ANUNDRAM Seths and the Cast of MORH BRAHMUNS..... } RESPONDENTS.

Surat Udalut, S. Bourchier, *Assist. Judge.* Decree 22d Feb. 1810.

THE Suit was filed by Appellant in the Zilla Court on the 9th, and decided against her on the 22d of February 1810 under the following circumstances. She sued for damages for expulsion from Cast, but Respondents denied that they had expelled her, and stated as a reason for having temporarily avoided her society, that her son-in-law Umbaram had charged his wife, her daughter Umbalukmee, before the Cast, with having received the advances of a Parsee for criminal intercourse with her. Without actually turning Respondent or Umbalukmee, who lived with her, out of Cast, they put off all General assemblies of the Cast and confined their entertainments to their own families and Relations, that they might avoid communication with them, but no further.

Court of Appeal. N. Crow, T. Day.

Suit by Appellant to compel Respondents to readmit her to Cast, from which she was expelled because of her daughter's bad character. Expulsion affirmed.

A complaint had been lodged by Umbaram against his wife in

* Vide note to Surat Cases No. 74.

in the Foujdaree Court, and as the case was of a delicate nature it was referred to the Shastrees, who found that Umbaram had shewn to several people a love letter addressed to his wife, and from the style and tenor of it, charged a Parsee named Okurjee with being the writer. Umbalukme asserted that her husband owed Okurjee money, and had invented this letter as an excuse for resisting payment, charging her to declare that Okurjee had attempted to seduce her. This plan she at first agreed to, and did admit before several persons, that an attachment subsisted between her and Okurjee; she afterwards however declared that nothing of the kind existed. A Person was on this called by Umbaram to prove that Umbalukmee had been seen in close conversation with Okurjee under a Tamarind tree near Mr. Warden's Bungalow on the Viriow road. It did not appear that the proof against Umbalukmee was considered sufficient by the Foujdaree Court, as Umbaram was left to prosecute Okurjee by a Civil Action. Umbaram soon after left Surat and had not returned.

The Court upon these facts held that Appellant and her daughter were living together, and although the latter's guilt might not have been fully established, yet some suspicion attached to her, and as the very suspicion of a Brahmunee woman cohabiting or holding improper intercourse with a Parsee was naturally revolting to Brahmuns, it was not to be wondered at, that the Cast should wish to avoid intercourse with her or her family, and they were justified under the circumstances of the case, in refusing to eat with Appellant or to invite her to a general meeting. Her remedy lay in an Action against Umbaram, by which her guilt or innocence might be determined; on these grounds the claim against the Cast was dismissed, and the Court of Appeal affirmed the Decree.

Decree 14th August 1811.

No. 14.

DEOKOONWUR Widow of ANOOPRAEE BHOOKUN..... } *Appellant,*

VERSUS

UMBARAM LALA.....*Respondent.*

Surat Udalut, S. Bourchier, *Assist. Judge.*

Suit by a Woman against her son-in-law with a view to clear her daughter's character.

Altogether dismissed.

APPELLANT took advantage of the recommendation of the Zilla Judge in his Decree passed in her former suit on the 23d February, to file the present one on the 24th April following, against her son-in-law, to recover damages for excommunication caused by his slander against his wife, her daughter. Appellant now said that she wanted only nominal damages, as her object was to have her daughter's character cleared, and with her to get readmitted to Cast.

Respondent in open Court declared, that he had been persuaded by some persons of the Cast to bring the charge, which was completely false, against his wife, and had suborned the witness who in the Foujdaree Court had deposed to his having seen Umbalukmee conversing with the Parsee. He said that finding the Cast would not allow him to cohabit with his wife, and being much in debt, he went to Unklesur, and had been since expelled the Cast.

The person who before deposed to having seen Umbalukmee conversing with Okurjee offered to confirm his former deposition by Oath, but the Court declined, as it was evident Respondent was lying with a view to get himself and family readmitted to Cast by a Decree of Court.

The conduct of Umbalukmee as acknowledged by herself, was quite sufficient to warrant the Cast in avoiding all further intercourse with her family, and the conduct both of her and her husband had been such that no order could with propriety be issued to the Cast for the readmission of Appellant or her daughter.

ter. As the principal members of the Cast however intimated to the Court that they *were willing to readmit the family on receiving security that the connexion between Okurjee and Umbalukmee should be completely broken off*, and on her paying a fine to the Cast, one Rupee Damages was awarded to Appellant and both parties ordered to satisfy the Cast, any fine required by them being paid by Respondent, and each party bearing their own Costs.

Decree 7th May 1810.

Appellant complained against this decision on the ground that the lower Court had not awarded proper damages, nor completely established her or her daughter's purity and obliged her to bear half the Costs.

Court of Appeal, N. Crow, T. Day, J. Romer.

The Court asked the Shastrees whether an action for loss of Character was maintainable by a wife against her husband?

They answered. "It is forbidden in the Shastr, because a "woman's husband is like unto her God, (Ishwur) and she "must remain obedient to his orders and conform to his "Will." (1)

The

(1) Mit. Book second, leaf 16th, page 1st, line 5th, "In the Smriti it is written, that in "disputes, between a Preceptor and his Pupil, a Father and his son, a wife and her husband, a Master and his Slave, no complaint ought to be entertained. But this must not "be construed into a prohibition against hearing all such disputes without exception as "may occur between these persons, for many of them are deserving of attention. Thus "Goutumu declares, let the Prince punish that Gooroo or preceptor, who, with other "than a thin cord, hollow bamboo, or such light instrument, inflicts on his pupil corporal punishment, even supposing that nothing less than beating will suffice: and "Munoo says let not punishment be ever inflicted on the noblest part, the head. If the "Preceptor therefore being influenced by passion, should strike this noble part with a "large stick, and the Pupil thus disgraced by punishment contrary to law, should complain to the Prince, justice may certainly be done. Again, from the verse respecting "land acquired by a Grandfather" (page 1st of leaf 50th and others) "it is clear that the "Ownership of the father and of the son is equal in such land, so that if a father should "sell, or otherwise make away with land or other property so acquired by his father, "and the son should appear as complainant before the Prince, the Guardian of the laws, "then the cause may be heard." (Vide note to No. 39 of these Reports) "Further it is "said in the Smriti that *A wife's private property (Strichun) may be taken by her husband* "to be used in a time of famine, in the more necessary duties of religion, in sickness, or

"during

The Court, in recording this Vyuvustha declared that the conduct of all the parties had been such as to preclude the Court from giving any order for their readmission to Cast, wherefore the Assistant Judge's Decree was reversed, Appellant being ordered to bear Costs.

Decree 14th August 1811.

N°. 15.

GUNGARAM WISWUNATH,.....APPELLANT,

VERSUS

TAPPEE BAEE, Wido of RUNCHHOR TRIMBUKESHWUR,..... RESPONDENT.

Surat Udalut. S. Bourchier, *Assist. Judge.* Sreemalee Brahmuns.

RESPONDENT filed a suit against Appellant on the 8th May 1810 to oblige him to resign 550 Rupees' worth of property, left by her late husband, and seized on by Appellant under a Will of the husband in his favour which she pleaded was illegal, because it destroyed her rights as widow.

Suit by a Widow to set aside a money assignment made by her husband in his Will for defraying his obsequies. Assignment declared legal

Appellant pleaded that Respondent had got all the property except that sued for which was assigned by the deceased to him, for performance of the funeral ceremonies. This was done, Appellant

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" during his own imprisonment, and it is not proper to give it back against his will. " But if the husband, having cash of his own, spend his wife's property in any mode " except the four above authorized, and fail to repay it when demanded, then justice may " be done between man and wife. Next is declared when justice may be administered " between a master and his slaves, whether begotten by himself, or entertained on con- " dition of maintenance, in short all slaves in whatever way enslaved. Narudu says, that " any one of them who saves his master when his life is in danger shall be released from " slavery and shall receive a son's share; wherefore if enfranchisement and a son's share " be not bestowed on such an one, who can refuse to do him justice?" The Vyuvustha relates to the wife alone, who was no party to the suit, and cannot apply to the claim of the mother-in-law for restoration to Cast, which seems to have been refused on the score of general bad character. The Costs perhaps did not fall on Respondent, only because the claim against him was dismissed.

Appellant said, because Respondent was only nine years old, which she admitted to be true. under the Hindoo Law.

The Will declaring Respondent Heiress to all the testator's property constituted the testator's Maternal Cousins Heirs to whatever property was left at her death, with the obligation of performing her funeral ceremonies, and then came a provision for the Application of Rupees 550, the sum in dispute, half being in Cash, and half outstanding debts, to the testator's funeral, Appellant being duly constituted his "Wukeel" for the purpose, under a Regular Wukalutnama.

The Zilla Court declared this Will illegal under the Hindoo Law, and decreed repayment of Rupees 275, the Cash, to Respondent by Appellant, who was enjoined to abstain from collecting the debts composing the other half of the assignment. Decree 9th May 1810.

The ground of appeal was that the Will being valid and true, the assignment of the money for funeral expenses must be valid too, and ought to be upheld. Court of Appeal, N. Crow, J. Romer.

The Court desired the Shastrees to state, how far a Hindoo had power, according to the Law of the Shastr, to make and execute a Will, such as that in dispute, and to what extent it was binding on his legal Heirs?

They answered, "a will giving property to the proper or "lawful Heir, is valid. As long as the next Heir is present, "it must not be given in favor of one in succession below him. "A will of the possessor of property written in favor of a worthy "successor, "iti kurtuvyuta," or "with certain provisions" "contrary to the Shastr, cannot be reversed."

The Court concurring in opinion with the law Officers as to the validity of the Will, reversed the Assistant Judge's Decree and adjudged repayment to Appellant of the Cash Rupees 275, and the right of collecting the outstanding debts to the amount

of

Decree 3d October 1811.

of Rupees 275, more, all to be applied as directed in the Will; his Costs also were granted.

Note. The whole Vyuvustha, which seems purposely obscure in its language, amounts only to this, "that the rights of the "lawful Heir may be affirmed, but cannot be set aside, by a "Will;" that is, a Will is of no use to a Hindoo. Vide Vyuvustha in Bombay Sudur Udalut Cases No. 37.

No. 16.

NUTHOO SUDARAM and others, the whole Cast of KUNDOLEEA Brahmuns..... } *APPELLANTS,*

VERSUS

ROOPSHUNKUR JAEESHUNKUR.... and GOUREESHUNKUR SIOOSHUNKUR. } *RESPONDENTS,*

Surat Udalut, S. Bourchier, *Judge.*

THE suit was filed on the 18th March 1806, by Appellants, seeking damages from Respondents for having appropriated to their own use certain fees, the produce of the Vrithee, or Profession, of the whole Cast, and so belonging to the whole.

Claim by the Body of a Cast to share in the gains of certain Members of the Cast.

The Cast were ex officio Kool Gours to the Kupol Cast of Bunyuns, and the principle which the Appellants desired to establish was, that the Collections made by each individual of the Kundoleea Brahmuns from his own Yujmans in the Kupol Cast, should go to the common fund, to be divided among the Cast. The practice in some Casts is to portion out a certain number of Yujmans to each Gour, but it does not always follow, as Appellants maintained, that the Fees of the Yujmans ought to be carried to the common stock, for this depends on the Bye Laws of each Cast. But Appellants insisted that such a Bye Law did in their Cast exist. The point of dispute however

was

was whether Respondents were entitled to keep their gains, Appellants insisting they ought to be carried to the common fund, and Respondents averring that their collections were quite distinct and belonged to themselves alone, as Kupol Nyat Gours, and not to the Cast in general as Kupol Kool Gours.

Appellants exhibited an agreement of the 5th Magh Sood A. S. 1682 or A. D. 1626, passed by Kulyan, and Koonwur, Sons of Trikum, to six persons composing the Cast of Kundoleea Brahmuns at Surat, acknowledging their selection by the Cast for the duties of Gour of the Kupol Bunyuns, and promising to account to the Cast for all their Fees of consequence, and to divide them in common, under permission to appropriate all small gains to themselves. The sources of these greater Fees were declared to be; first, Marriage, second purification for women pregnant of their first child [Ughuhurunee]; third the funeral ceremonies within, and at the expiration of, the year [Kriya or eleven days' ceremonies, Vursee, the annual one, with the Neel] fourth, the Vrith (1) or vow to keep holy days, and fifth, the Narayun Bulee or offerings to Narayun. They promised fidelity in this under pain of losing their rights in the Kupol Bunyun Cast, of degradation from all the eighty four Casts of Brahmuns, and a fine of 25 maunds of Oil for the *Mosque*.

Another exactly similar, passed by Nuthoo and Siooshunkur Sons of Vireshwur on the 8th Sravun Sood 1812 or A. D. 1768, was given in.

Respondents on their part produced a Cast Bundobust dated 13th Posh Vud A. S. 1786, or A. D. 1780. "It was drawn "up on occasion of a general dispute between the Cast of "Kupol Bunyuns and that of the Kundoleea Brahmuns res-

"pecting

(1) Some day set apart for honoring a particular deity, as the Siooratr Vrith &c. The Gour's fee is due, not on the annual or monthly recurrence of the day (the Siooratr for instance is on the 14th of every month, the Ram Nowmee once a year) but only on the first celebration, and again on the accomplishment, of the vow. A vow to keep the Siooratr Vrith is only accomplished in fourteen years.

" pecting the office of Kool Gour, in consequence of the latter " claiming the old established Fees, called Mastanadapu. The " Kupol Cast had offered them 24 pice as the Mastan Fee on " marriages, and Funerals. The Kundoleeas refused it on the " plea that they had always received more. The matter went " before the Government which determined " that old customs " could not be set aside by new ones." The Kundoleea " Brahmuns now asked Vireshwur Huree, *Nyat Gour* to the " Kupol Cast of Surat, to make that Cast give them something " more. He pleaded that the Kupol Cast alone had the power, " as he was only their Gour. He was for this abused and a " schism was in consequence produced in the Kundoleea Cast, " and kept up for 21 years, till A. S. 1786, the present year, " when, on the occasion of the Sumaradhna, (2) of Sioodutt " Neelkunth, a Kundoleea Sunyasee, the whole Cast went to " the Kupol Bunyuns, begging them to give them something " for the Mastan Fee, and settle the cause of the Schism. The " Kupol Cast recommended them to eat together, whilst they, " the Kupol Cast, consulted their Tutelar Deity Samoodri " Mata (Lukshumee, as produced from the Sea). The com- " mon Feast was made on that very occasion, and a full meet- " ing of the two Casts being held, the following fees were " agreed on.

" For marriage, a Rupee each from the Bride and Bride- " groom; one quarter Rupee for the Seemunt or Ughulnurunee; " one Rupee for the Kriya. When the Vursee or annual cere- " mony fell in with the Neel, (3) they were to pay one Chi- " gusee, and where the Neel did not occur, then one quarter " Rupee; one Chigusee for the Narayun Bulee; the whole " Kundoleea Cast at Surat, whether native or foreigners, to " divide all these among them.

" Secondly

(2) The funeral ceremony on the 12th day after death of a Sunyasee.

(3) Called Neelodvahu, a typical marriage of a Bull calf, or its image, with four Cow Calves or their images; it is performed only the first year after death.

" Secondly, when the Kupol Cast held the wedding Feast at " the Bridegroom's house, all Kundoleea Brahmun strangers to " receive four pice to buy uncooked grain for one dinner and " the same at the wedding Feast at the Bride's house; at the " Seemunt, Kriya, and Vursee Feasts, the same amount to be " given, the Vursee offering being for foreigners alone no " Kundoleea of Surat to be entitled to the above commutation " money allowed to Foreigners, who were not to partake of " any feasts except these five (meaning the two marriage Feasts " with the Seemunt, Kriya, and Vursee). At all Kupol Cast " Feasts, the two Nyat Gours, Nuthoo and Sivoshunkur, were " to receive 20 seers of Grain, 4 of Ghee, 2 of Molasses; half " of this to be given by those whose custom it was to feed the " Kundoleea Brahmuns, the female Nyat Gours. The Gours " to receive the usual offering on all matters of religion, whether " of prayer or penance.

" The penalty for breach of this Bundobust was declared to " be a fine of Rupees 200 to Government, and the displeasure " of Samoodri."

The suit was in this stage referred to Arbitration, but failed. The parties then proposed that the matter should be left to the decision of Baba Shastree of the Udalut, and the Court gave way to this wish, because though not strictly regular according to Section 4th Regulation 6th of A. D. 1800, yet there was no hope of deciding it by the best mode, that of a regular Punchayat.

It was therefore referred to the Shastrees under an arbitration Bond, and they decided in favor of Respondent, on the grounds, that neither of the documents handed up by Appellants had been ever acted upon, whereas the original of that given in by Respondents was found to be in possession of the Kupol Bunyuns, signed by them and by the Kundoleea Cast, and thereby it was clear that the Nyat Gourship belonged to the families of the two Respondents, that they had all along

exercised

exercised its functions to the present day, and therefore the claim of Appellants, the Kool Gours, for the Nyat Gour's Fees, was improper. The Decree confirmed the award.

Decree 8th May 1810.

The suit was again referred to arbitration by the Court of Appeal, and the Assistant Judge's Decree affirmed, because the opinion of the majority of the new arbitrators was similar to that given by the Zilla Shastrees.

Court of Appeal, T. Day, J. Romer.

Decree 28th August 1811.

No. 17.

LALSOONDUR; POONJIYA PRUMANUND; DHOOLLUBH NARAYUN; and WITTUL BUNMALEE, of the BHATIYA LOHANA, or Milkman Cast..... } *APPELLANTS,*

VERSUS

SUMBHOO NARAYUNDAS Seth, and the rest of the same Cast..... } *RESPONDENTS.*

Surat Udalut, S. Bourchier, *Assist. Judge.*

THIS was a suit filed by Respondents on the 8th May 1810, to compel Appellants to refrain from opposing them by an attempt to bring into Cast, one Lal Nuthoo excommunicated about 23 years before on account of his daughter becoming a Moossulmanee. It appeared, that a suit of the Gours was still pending against the Cast in the Udalut, which had referred it to the arbitration of eight Shastrees. The Subject of this suit was to remove an excommunication laid on them by the Cast, for partaking of a dinner from Lal Nuthoo, and the present Appellants grounded their defence, for associating with Lal Nuthoo, on his having being readmitted to Cast privileges by Vunmalee Seth and the rest of the Cast.

Absolution of an excommunicated Member of a cast, by a person claiming to be Setheea of it, set a side on proof that the Setheeaship did not vest in him, & his authority was not sufficient to annul the act of excommunication.

The present cause therefore hinged on this point of the Setheeaship, which had been a subject of dispute from the time of the Nuwab's Government. The last sole Setheea was Wullubh,

lubh, the father of Narayun and Vunmalee. Respondent Sumbhoo was son of Narayun, but being young when his father died Vunmalee assumed the whole Office of Setheea. Sumbhoo when grown up claimed the prior right to the Setheeaship as son and Heir of the Eldest of the two Brothers; his claim was disputed first by Vunmalee, and now by his son, Appellant Wittul Vunmalee, and Lal Nuthoo's excommunication having been taken off by Vunmalee and his party formed a good subject for agitating in the Udalut their respective claims to the Setheeaship involving the right of absolution as a privilege of the Office. This right of absolution exercised by Vunmalee, was consequently pleaded by Appellants on the present trial, as relieving Lal Nuthoo from his excommunication, and bearing them out in associating with him.

With respect to the excommunication, it appeared from the evidence of Mookcond Yedneshwur, Shastree, a Morh Brahmun, that he had been called on about 8 years before by Vunmalee Seth and the Cast with their Gour to explain the punishment or penance due by Lal Nuthoo; this he had laid down, but could not say whether Lal Nuthoo was admitted under it or not.

The Court ascertained that 144 of the Cast voted with Respondent against Lal Nuthoo's readmission and 115 with Appellants in favor of Vunmalee's act of absolution, leaving a Majority of 29 against Lal Nuthoo's restoration to Cast. This was held conclusive against the Appellants, and with respect to the Setheeaship, even admitting Vunmalee to have had plausible grounds for assuming the authority of Seth on the death of his brother, there was no doubt, as these offices were hereditary, as to the individual pretensions of the present parties; Respondent Sumbhoo, as son of the eldest brother, had certainly a better title to the Office than Appellant Wittul Vunmalee, whilst the fact of Lal Nuthoo's readmission by Vunmalee, was very doubtful, and the attempt of Appellants to reinstate him without consent

sent of Respondent Sumbhoo was declared to be irregular, and Appellants received an injunction to refrain from communion with Lal Nuthoo, until he had atoned to the satisfaction of the Cast for his offences.

Decree 13th August 1810.

This decision was affirmed in Appeal.

Court of Appeal, N. Crow, J. Romer, Decree 5th Sept. 1814.

N°. 18.

TOOLJARAM HURJEEVUN,.....*APPELLANT*,

VERSUS

NURBHERAM and RAJARAM, sons of... KESOOR,.....} *RESPONDENTS*.

Surat Udalut, S. Bourchier, *Assist. Judge.*

THIS action was laid in the Surat Zilla Court by Respondents on the 17th July 1810 as first Cousins and next Heirs of Poorshotum Bhugwan lately deceased, to recover the balance of his Estate, value Rupees 638, from Appellant, the husband of their Cousin's daughter Moolee, also deceased.

Amudabadee Sreemalee Sonees.

A Hindoo is not justified by any circumstances in willing away the whole of his property whilst legal Heirs are in existence.

The demand was resisted and plea of right set up by Appellant under a will formerly passed in his favor by Poorshotum as an inducement to Appellant to marry his daughter Moolee, who was deformed and likely to remain single all her life in consequence. It was dated 15th Magh Sood A. S. 1857 or A. D. 1801, and drawn up in the form of a marriage contract, which after specifying the amount of Dower, declared in its last Clause "that he, Poorshotum Bhugwan, had devised all his "property by will to Appellant during life and after his death "Roodhe Boorhe, well or ill, without relations retaining any "claim to it."

A Legacy of Rupees 50 was verbally made by the testator on his death bed to his Cousin Ramkoonwur, and the Court, deducting

deducting this, and the amount funeral expenses from the value of the Estate, and holding the Will void, decreed payment of the balance to Respondents. Decree 3rd August 1810.

The Court of Appeal required their Shastrees to state whether the Will was a legal instrument, binding on Poorshotum Bhugwan's legal Heirs, it being proved that Moolee was of low stature, stinted in growth, of a diseased habit, and unprepossessing appearance, and died at the age of 16? Court of Appeal, N. Crow, J. Romer,

The Shastrees answered, The marriage was ratified according to the Custom of the Cast, but it is laid down in the Shastr, that so long as a man has Heirs of his own he shall not assign away all his property to any person whatever. He might have assigned something proportioned to the magnitude of the Girl's defects, (1) and his own circumstances, but it was directly contrary to the Shastr to give away all, as long as Heirs were in existence. The Decree of the Zilla Judge was under this Vyuvustha affirmed. Decree 5th Oct. 1811.

N°. 19.

JACOB JOHANNES.....*APPELLANT*,

VERSUS

SHEKH AHMUD NOOR OOD DEEN....*RESPONDENT*.

THE Suit was filed by Respondent to obtain an injunction against Appellants for making obstructions to an alteration of Respondent's stable, the roof of which he wished to raise. Surat Udalut, S. Bourchier, *Assist. Judge*.

Appellant urged in defence, that he did not mind how many stories The rights of neighbourhood will prevent a man,

(1) From this case and No. 42 it would seem, that certain defects in the bride or bridegroom are admitted to afford a valid reason for increasing the portion, or Dower, as the case may be, beyond the customary value; the Shastree however is entirely silent on the point.

from opening new doors and windows in his house, but not from raising its roof.

stories higher Respondent raised the building but he objected to the present alteration, because Respondent only intended to make a Hay loft, and the stable adjoined his house, which made him afraid of fire, and of thieves getting into his house.

The decision founded on a report of the Mooftee, and verbal opinion of the Moohummudan Law Officers, was, that Respondent had no right to open any new doors or windows in the building, but might raise the roof of the building as high as he pleased. The injunction was therefore issued against Appellant's obstruction, but Respondent was also warned that his keeping hay was against the Rules of the City Police.

Decree 11th July 1810.

Court of Appeal, N. Crow. J. Romer. Decree 1st Oct. 1811.

This decision was affirmed on Appeal by the Provincial Court.

See Appellant's conduct in a similar dispute, mentioned in Bombay Cases No. 52.

No. 20.

NOWROZJEE KHOORSEDJEE.....*Appellant*,

VERSUS

DHUNA BAEE, his mother-in-law,.....*Respondent*.

Surat Udalut, S. Bourchier, *Judge*,

THE Suit was filed by Appellant on the 30th November 1810, to compel Respondent to adhere to the terms of a marriage contract by which she had betrothed her daughter Koonwur Baee to Appellant. He pleaded that he had given her the usual marriage Presents, and the putting on of the ring and other ceremonies usual at Mungnees had been performed, and his betrothed bride had been allowed to live with him in his house at Bombay, notwithstanding which Respondent had taken her daughter away and declared that Appellant should not complete the marriage.

Breach of a marriage contract not permitted under any circumstances by the Rules of Parsees.

Respondent admitted the fact of entering into the contract, but

but pleaded that Appellant had turned out so bad a character, that her daughter positively refused to marry him, and their customs did not warrant the enforcing a marriage against a person's will.

Appellant insisted that a Mungnee was equally indissoluble with a perfect marriage, and referred the Court to the Modee of the Parsees in proof of it.

Respondent repeated her assertion that the Appellant was a notoriously bad character, and proved it by a reference to the magisterial records, which shewed that he was banished the city for want of security to keep the Peace towards a Prostitute whose house he had broken open and destroyed her clothes. Respondent at the same time gave in twelve instances of Parsees whose Mungnees had been dissolved.

Appellant on the contrary produced five witnesses who deposed that Mungnees never were dissolved, and a sixth proved celebration of the Mungnee with the usual ceremonies and delivery of the ring.

The Court now referred the matter to a Punchayut of twelve Parsees, including the Modee and Dustoor, and they stated unanimously, that the contract must be enforced, as no Mungnee was in their sect permitted to be broken.

The Dustoor and two others added, that if broken the bride could not contract a second marriage.

The Court held that Breach of a marriage contract without cause ought not to be suffered in any Cast, but there was very great cause for dissolution of that in dispute. Appellant was proved to be a worthless character; and since he had been banished the jurisdiction he was not entitled to the protection of the Court. Respondent's daughter, if she married Appellant, would be involved in a disagreeable predicament by being obliged to live away from her birth place and relations.

The

Decree 15th May 1811.

The Court did not therefore conceive Appellant entitled to a verdict, and dismissed his claim for enforcing the Contract, making Respondent bear half the Costs.

Court of Appeal, N. Crow, T. Day, J. Romer.

The Court considered this a very hard case, but the Law as stated by the Modee, Dustoor, and members of the Punchayut was, that a Mungnee cannot be broken off or dissolved. These persons, expounders of the Parsee Laws and religion, had noticed no case or circumstances in which a contrary rule would prevail, it was therefore to be concluded that none such existed The question resolved itself into a matter of expediency in opposition to the usage and law of the case. However much Respondent was to be pitied for her choice of a son-in-law, the Court was bound both in equity and justice to uphold the law and customs of the parties, duly ascertained as they in this case had been, however much they might militate against individual or private feeling. It was not the case of the parties in this suit alone; but that of the Parsee community, who were liable to be more or less affected in a very tender point, by the decision the Court might come to. The Court thinking any innovation on the established laws and customs of the natives inadvisable generally and inexpedient in the present instance, decreed that the Judge's decision should be reversed, and the Mungnee declared indissoluble, agreeably to the exposition of the Modee, and Dustoor.

Decree 31st October 1811.

No. 21.

GUNGA, daughter of MADHOWRAM.....Appellant,

VERSUS

HER STEP MOTHER JEEVEE.....Respondent.

Broach Udalut, J. Romer, *Judge,*

THIS case was filed by Respondent in the Broach Udalut on the 14th December 1810, against her step-daughter, with

a view to recover from her property to the value of Rupees 2847, left by Respondent's late husband Madhowram, which Appellant had possessed herself of and refused to deliver up. The parties were of Sookulteeruth, the principal seat of Sreemalee Brahmuns.

Sreemalee Brahmuns. Succession of a Childless widow upheld under the Hindoo Law, against the rights of her step daughter, said to be superior according to the Cast Rules.

It was pleaded by Appellant in answer, that by the custom of the Cast the Estate of a man dying without male issue descended to his daughter in preference to his second wife, being childless; that such was Respondent's situation, and all she was entitled to was her Dower or Kunya Dan, and, if she pleased, a separate residence and maintenance; that Respondent had already claimed and received half of every thing, of the house, ornaments, clothes, and cooking Utensils, and half of the balance of some treasure found in the house after a debt for the funeral of Madhowram's Mother Ruttun Buhoo had been paid off. It was at the same time admitted, that Respondent was Heiress to the family Estate after Appellant's death, but not before.

Respondent replied, that the law was in favor of the wife's succeeding before the daughter, who in this case also was Childless, and no custom of Cast existed contrary to it.

The Court finding that the case rested entirely on the respective rights of the widow and step-daughter, and that the custom of the Cast was pleaded, resolved first to ascertain the law of the Shastree on the point, and then to see how far the custom of the Cast differed from it. The Pundits were therefore asked which of the two disputants, the step-mother or the daughter, both being childless, would succeed as Heiress to the property of the husband and father, Madhowram?

The Shastrees answered, that the wife, or step-mother, was sole Heiress during the term of her natural life; that the daughter had no claim to participate or share so long as her step-mother lived, but being next in succession to her, had a good claim for maintenance and a residence during the step-mother's life,

life, and for the same reason, the step mother had no right to sell or alienate the property. This on the text, "The wealth of one dying without male issue goes to his wife" (Mit. leaf 55th, page 2d).

In opposition to this, the Appellant called six members of the Cast, who deposed that the Childless daughter alone, and not the second wife of a Sreemalee Brahmun deceased without male issue, would succeed to his Estate, that the wife retained her Pulla and obtained a maintenance, and might live with her own father, but possessed no right to share. In proof of it they named three or four instances of daughters succeeding before the widow.

The Court held that the evidence adduced in favor of the particular custom of the Cast, had by no means established the position of Appellant that the Sreemalee Brahmuns entertained such a general usage in respect to the point at issue as would warrant the Court's departure from the law of succession laid down in the Shastru, declaring the Widow to be the Heiress.

Decree 18th June 1811. The Respondent was therefore decreed entitled to possession of the property of Madhowram, detained by Appellant who was ordered to restore it.

Court of Appeal, N. Crow, T. Day. The Appellant grounded her right to succeed under the Rules of Cast, which she pleaded were decidedly in her favor, and were conformable to the authority of Kokil, (the Kishi of the Sreemalee and one or two more Casts who following him dissent on some material points from other Casts, particularly in regard to marriage and succession of daughters.)

The Court considering the Rules of Cast proved to differ from the law, asked their Pundits whether the Hindoo Law or the custom of the Cast was to be upheld?

They declared, that both were equally valid; that according to the Law Respondent was Heiress to the Estate of her husband, burthened with the maintenance of his daughter, who on

the

the contrary was declared sole Heiress according to the customs of the Cast. The former disposition under the law, was in their opinion the best, but neither of the parties was at liberty to sell the immoveable part of the Estate, during the life of the other.

The Court decreed (chiefly on a verbal report from the Shastrees that the Cast had long tried to accommodate matters between the parties,) that Respondent should enjoy the Estate during her natural life, being bound to allow Appellant a decent maintenance.

Appellant prayed for a review of Judgment on the ground of a Muhuzur from the members of the Cast, who therein declared, that the daughter was entitled to a share of her father's Estate as well as her step mother. As this opinion of the Cast was uncalled for, it was rejected, but upon the opinion of the Hindoo Law Officers, it was further provided, in Amendment of the Zilla Court's Decree, that Appellant should not be ejected from the house by Respondent until provided with another residence, that she should receive Rupees 100 per annum, and have one of the six family slaves, because it was not fit that the daughter of a respectable man should perform the work of a slave. The produce of ten mango trees out of 125 on the Estate was likewise awarded to her.

Decree 18th November 1811.

N°. 22.

KASEERAM KRIPARAM.....*Appellant*,

VERSUS

UMBARAM HUREECHUND.....*Respondents*.

THE suit was filed by Respondent on the 11th June 1811 complaining that Appellant, his father-in-law, neglected to send his wife Ichha, with her dower to his house.

Surat Udalut. S. Bourchier, *Judge*. Kunsara Cast,

Appellant

Appellant answered that the Dower was not in his possession, but in that of his daughter, the Respondent's wife, and that she had resided some months with Respondent till continued ill usage both from him and his mother forced her to take refuge with her grandmother.

Divorce permitted to a Wife according to the Rules of Cast in case of ill treatment.

The Court ordered Ichha to live with Respondent, on his and his mother's furnishing security against ill treating her and for her due maintenance, the Appellant being enjoined to send her to Respondent's house with all her clothes and ornaments, which it was further provided should remain in her possession.

Decree 9th July 1811.

Appellant objected to the responsibility for clothes and ornaments entailed on him by this Decree, urging that Respondent could demand no condition of the kind, and his wife alone was competent to claim her ornaments, for which, when she did so, he would answer; on her part he claimed that her mother-in-law should be turned out of Respondent's house.

Court of Appeal. N. Crow, T. Day, J. Romer.

The Court affirmed the Judge's Decree in all its provisions.

Decree 29th October 1811.

On a petition from Ichha complaining of ill usage, the Court of Appeal called up the Patels of the Cast, some of whom declared that ill usage was by the Rules of the Cast a valid ground of divorce which was practised from the oldest times, and that Ichha was entitled to demand it in consequence of the constant ill treatment she had received. This Report was opposed by Respondent and by others of the Patels, who declared against Divorce on such slight grounds.

The Court was of opinion that there were sufficient grounds in this case for a divorce between Respondent and Ichha, and a precept to the Zilla Court was issued pronouncing one.

N°. 23.

GHELAJEE NANA BHAEE,.....Appellants,

VERSUS

UMUR SINGH and others forming The RUJPOOT PUNCHAYUT..... } *Respondent.*

Surat Udalut S. Bourchier, *Judge.*

Expulsion from Cast of a Member for neglect of funeral ceremonies, affirmed.

APPELLANT filed this suit on the 11th October 1811 complaining that Respondents had turned him out of Cast. It appeared from his statement; that an Aunt of his died about 7 months before, and he then begged Respondent Umur Singh, the Head of the Cast, to prepare the usual feast on his account on the 12th day. Umur Singh declared the Cast either should not, or would not, attend his feast, and Appellant therefore of his own accord feasted certain of the members at his own house, in defiance of a prohibition given to individual members by Umur Singh. He was afterwards turned out from the feast given by another member of the Cast, and now claimed damages.

Respondent Umur Singh, who was a servant of the Nuwab, represented, that Appellant had not performed his Aunt's funeral properly, and this was the cause of his excommunication.

The case appeared to have been before the Nuwab, to whom the Punchayut gave in a statement, declaring that on the marriage or death of a member it was usual to give one dinner to the Cast; that Appellant's sister and mother-in-law complained to them against him for not complying with this and other customs, and forbid their attending his feast; the Cast said that when he complied with these demands, they would attend his feast, but as Appellant refused to come to any terms with the women, they could not communicate with him.

The Court decreed that whenever Appellant should feast the Cast

Decree 9th Dec. 1811.

Cast in the proper manner he should be readmitted to its privileges, and not before.

Court of Appeal. N. Crow, T. Day. Decree 19th Feb. 1812.

The Court of Appeal, upon Appellant's admission that he only invited such of the Cast as attended his Aunt's funeral, and upon proof that his conduct was irregular in this respect, affirmed the Zilla Decree.

N°. 24.

JOGA LUKMEEDAS, and other 10 Members named, with the rest of the PUNCHAYUT of KOONBEE SAREE Weavers, 401 Looms, } *APPELLANTS,*

VERSUS

LALA JOITA. .....*RESPONDENT.*

Surat Udalut, S. Bourchier, *Judge.*

RESPONDENT sued in the Zilla Court to recover from Appellants the sum of Rupees 3,391-3-50, being Rupees 1,850 balance of wages due from the Punchayut for ten years at Rupees 200 per annum, and the rest, sums paid by him on account of the Cast. He exhibited a Sameedustkhut account signed by the Appellants named, who in answer clearly admitted that sum to be due, not from them alone, but from the whole Punchayut, to whom they referred him.

Admission by certain Members of a Trade of the validity of claims against the Body of the Trade, who disputed them, held to entail responsibility on the consenting Members only.

The other members of the Punchayut gave in a separate answer, denying that Respondent was ever entertained by them as a servant, or that they had passed him any acknowledgment for this money. They referred him to the eleven Appellants whom he had sued by name, and who had acknowledged the debt to him, and they offered to prove at the same time that these persons had no authority to act on the part of the Punchayut which had appointed four other persons as Patels; however it did not appear distinctly that such was the case, whilst Respondent

Respondent shewed that he himself and Appellant Joga Lukmeedas as Patels, had sued on the part of the Punchayut and recovered, an entrance fee due from two persons who set up trade as Saree Weavers without being free of the Cast.

The fee or entrance money demanded in that case was 15 maunds of Ghee, or its value, Rupees 360 at 24 Rupees per maund. The interlopers declared that no such heavy fee existed and that they had already paid Rupees 51, the usual entrance money.

The votes of the Cast being taken, 371 persons were in favor of levying the fee of 15 maunds of Ghee, 58 against it. It was discovered that the fee of Rupees 51 was of very old date, and had been increased to the value of 15 maunds of Ghee, when the Cast became so large as to make the distribution of the former sum's worth of Ghee impossible among 401 Looms. The Defendants likewise failed in proving that they had paid even this smaller fee, and judgment was given against each of them for 15 maunds of Ghee or its value, as sued for, till payment of which they were interdicted from working at the Saree Looms.

The Court held that as the eleven Appellants particularly named by Respondent had taken on themselves to sign their acknowledgment of the justness of his claim, and had admitted the same in Court, they, and they alone, must be held liable to make good to him the amount of the debt; the remaining members of the Cast were exonerated.

Decree 9th Dec. 1811,

The Court of Appeal affirmed this decision on the same grounds.

Court of Appeal, N. Crow, T. Day. Decree 3rd March 1811.

No. 25.

N°. 25.

HUREE BHAE BHUWANEEDAS,..... .....APPELLANT,

VERSUS

CHUNDUN, Widow of OODHOWJEE,.....RESPONDENT.

Surat Udalut. S. Bourchier, *Judge.* Kumbaita Morh Bunyans.

THE Suit was laid in the Zilla Court by Respondent against Appellant, with his wife Mankoonwur, and daughter Prankoonwur, claiming damages for breach of a contract for the marriage of her son Krishundas with Prankoonwur, which Appellant had broken off after receipt of part of the Dower, and public notifications and other means, that the Contract had taken place.

Contract of Marriage voided by award of arbitration.

It was urged by Appellant in answer, that Respondent had taken back the Dower which she gave, and by this breach of her part of the contract, justified Appellant in declining to complete the marriage.

Respondent gave in a counterpart agreement for Dower signed by Appellant, and called as a witness the Gour of the Cast, who proved this agreement, and the Mungnee generally.

Appellant opposed this by another witness a member of the Cast, who said he was told that Respondent had taken back the Dower Jewels, and heard Appellant before the Cast admitted it to be the case.

The Court found the Mungnee proved and admitted, and there being no evidence to shew that it might be broken, it was decreed that the contract should be upheld, and the marriage celebrated at the proper time, Appellant giving good security that he would not give away his daughter to any other but Respondent's son in the mean time.

Decree 30th Dec. 1811.

Court of Appeal.

The parties were prevailed on by the Court of Appeal to refer

fer their dispute to five members of the Cast, who ascertained from the rest, that Respondent decidedly did take back the Jewels by borrowing them from Appellant's wife under a promise to return them in fifteen days, and as she had failed to do so, they declared the contract void; this award the Court affirmed by their decree.

N. Crow, T. Day.

The Court was afterwards induced at the prayer of Respondent to take, through the Judge of Surat, the opinion of the remaining members of the Cast on the question, whether it was allowed among the Khumbaitee Morh Bunyuns to break off a marriage after the parties had been betrothed?

Sixteen members declared it was not permitted, twenty one that it was allowed by mutual consent or death. The Court however upheld its decision which was appealed against to the Sudur Udalut, but not prosecuted to an end.

Decree 12th May 1812.

N°. 26.

HUREE BHAEE UMBAEEDAS.....Appellant,

VERSUS

JAEEDAS KESHOORDAS.....Respondent.

RESPONDENT laid this action on the 2nd July 1811, to recover from Appellant Rupees 515, value of Dower Jewels belonging to his late wife Juvehur, the daughter of Appellant, who was bound by the immemorial and acknowledged rule of the Cast to restore, on his daughter's death, all that had been received from her husband, Respondent. The case was stronger than usual, because Appellant had soon after his daughter's marriage with Respondent, compelled him by action at law to make good as much of the Dower as it was then short of Rupees 515, the value of it now sought to be recovered.

Surat Udalut. S. Bourchier, *Judge.*

The Father of a Woman is bound both by law and Custom to restore his daughter's dower to her husband in case of her death without living issue.

Appellant

Appellant totally denied the claim, and from the further pleadings it turned out that the parties had for years been disputing about the deceased, who lived and died in her father's house. The Court asked the Shastrees whether, in case a wife having her Pulla in her possession died in her father's house, the father was bound to account for her Dower to the husband, or not?

They replied, that if the wife in this case died without daughter or son, the father must account to the husband for her dower provided she had it in her own possession, for the husband was Heir to it (in default of daughter or son.) The Court found the claim good and valid, and decreed the ornaments as per list filed, or their value as sued for, to Respondent.

Decree 21st Dec. 1811.

Court of Appeal. N. Crow, T. Day.

The Court remarked, that notwithstanding Appellant's total denial of the claim, the list of ornaments filed in the lower Court corresponded exactly with that on which the former Decree against Respondent was founded, and it was fair to believe that after such Decree, the wife had them in her possession, and living ever since with her father, he was bound to account for them to her husband. The Zilla Court's Decree was therefore affirmed.

Decree 8th May 1812.

No. 27.

JUGJEEVUN NUTHOOJEE, and five others..APPELLANTS,

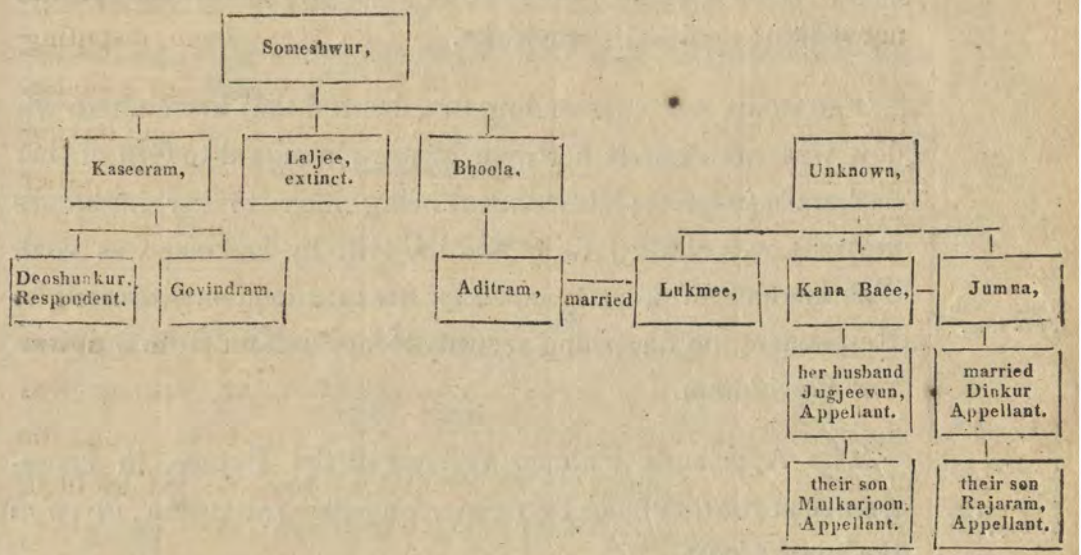
VERSUS

DEOSUNKUR KASEERAM.... .....,.....RESPONDENT.

Surat Udalut S. Bourchier, *Judge.* Kherawal Bej, Brahmun Cast.

THE Suit was filed originally by Respondent on the part of his brother then abroad and himself in the Zilla Court on the 5th April 1811, and was founded on the conflicting rights engendered by Krishnarpun opposed to Inheritance.

Someshwur,



The property in dispute was that left by Aditram value Rupees 25,000 to his widow Lukmee, who bequeathed it away in Krishnarpun to her Sisters' sons Mulkarjoon and Rajaram, instead of allowing it to descend, as by law it would, to Respondents, the Nephews of her husband. The Respondent from poverty sued for no more than Rupees 2100 in the present action.

Krishnarpun by a widow in favor of her Sister's sons maintained against the claims of the legal Heir to the same property, but the Donees declared incompetent to take or disburse sums set apart for performance of the Donor's funeral ceremonies.

The defence rested entirely on the Krishnarpun, which was passed by Lukmee stating that the property real and personal was entirely acquired by her late husband, and she gave it and some outstanding debts in Krishnarpun to her Nephews, who pleaded that property given in Krishnarpun could never be resumed, and the claims of the natural Heirs were of no validity.

The Krishnarpun was accompanied by a Dhurm Vyuvustha Putr, or codicil, whereby Lukmee reserved a thousand Rupees and some debts not mentioned in the Krishnarpun, and settled the amount to be expended in Legacies and on her funeral ceremonies, which were to be celebrated by the Donees.

The Shastrees said that the Krishnarpun made in this instance by the Childless widow Lukmee in favor of her Sisters' Sons was valid according to the Shastru because they were competent Donees (Dan Patru, comprehending generally all except Sugotrus

gotrus and Supindas) and that the Dhurm Vyuvastha Putr did not militate against its provisions.

The Court notwithstanding this, decreed that a Childless widow was not entirely her own Mistress in regard to Gift of her husband's property; Respondent being Heir to her husband's property was entitled to it, and the Gift by Lukmee was void. The amount of property sued for was consequently decreed to Respondent, he furnishing security to account for it to his brother Govindram.

Decree 30th June 1812.

Court of Appeal, N. Crow, T. Day,

The Appellants claimed reversal of the Decree, in consequence of the difference between it and the Vyuvustha given in the lower Court.

Respondent again pleaded that the Krishnarpun was illegal, and claimed the right to carry the provisions of the Dhurm Putr into effect at any rate.

The Court of Appeal stated the case to their Law Officers, who declared, that Lukmee was at liberty to give away in Krishnarpun the sum in Cash, Clothes, &c. mentioned in it, but ought to have reserved for Respondent the family house in Oomreth, which she had also given to Appellants. However, it could not be remedied, for the Krishnarpun could not be annulled, nor property assigned by it resumed. The assignment in Krishnarpun of outstanding debts was improper and would not hold good, because the realization of them was uncertain. The provisions of Dhurm Putr must be acted up to, but not by the Appellants, sons of the Donor's sisters, since they had no rights except in the absence or incapacity of the nearest Heir, Respondent in this instance, who was entitled to perform Lukmee's obsequies. Appellants must therefore pay over to Respondent what remained of the amount assigned in the Dhurm Putr for obsequies. The Court amended the Zilla Judge's Decree by directing that Respondent should make good to Appellants the property given to them by the Krishnarpun, the former

Decree 27th August 1812.

mer retaining the amount named in the Dhurm Putr, and reimbursing Appellants for what they had expended on their Aunt's obsequies.

No. 28.

GOPALDAS KISHUNDAS,.....APPELLANT,

VERSUS

DAMODHUR and JUGGUNATH CHELAS, of BHUKTIDAS BYRAGEE,.... } *RESPONDENTS.*

RESPONDENTS on the 9th June 1812, laid this action to set aside a transfer made by Respondent Juggunath about two years ago to Appellant Gopaldas, of a Mundeer in the Mehdur Poora left by Bhuktidas their common Gooroo. Respondent Damodhur, when he went abroad about 10 years ago, put it into the hands of Juggunath who being of a weak understanding was persuaded by Appellant to make it over to him for Rupees 205. Appellant set up a plea of a Krishnarpun made in his favor by Juggunath A. S. 1826, giving him the mundeer and all its appurtenances lands &c.; said he had been at much trouble and expense in redeeming part of the property, and was fully entitled to keep it.

Surat Udalut, S. Bourchier, *Judge.*

Alienation of a Mundeer by one out of six Chelas of a Byragee Gooroo declared illegal without concurrence of all.

The Court found that Juggunath, when he gave over the mundeer to Appellant was not in his right senses, and was not at liberty to make away with it. Restoration to Respondents was therefore decreed.

Decree 9th July 1812.

The parties were by the Provincial Court prevailed on to refer the dispute to the arbitration of Nurhurdas Jeevundas, their Muhunt or spiritual Head, who, taking six others to assist him in deliberating, decided with their concurrence, that the two Respondents were the legal representatives of Bhuktidas, the per-

Court of Appeal, N. Crow, T. Day.

son

son by whom the mundeer was acquired, since the remaining four chelas were absent on pilgrimages; that it was an old and unalterable Rule among Byragees that the chelas were joint Heirs to the Mundeer and had an equal interest in it, so that one alone could not alienate it without consent of all; that the Mundeer and property irregularly assigned by Juggunath to Appellant must consequently be restored, Respondent being liable for any claims upon it and Appellant having his action to recover whatever he had laid out in redeeming any part of it. The Decree affirmed this award.

Decree 8th Dec. 1812.

N° 29.

RUGOONATH JETHA.....*Appellant*,

VERSUS

POORSHOOTUM SUNKUR and others, the Cast of BLACKSMITHS. ..... } *Respondents.*

Surat Udalut, S. Bourchier, *Judge.*

Expulsion of a Member of the Lohar Cast for marrying a second wife without consent of his first, affirmed.

Appellant on the 14th August 1812, sued the Cast to obtain damages for expulsion under the following circumstances. Some years ago he married Jankee the daughter of Huree Bhaee, but finding her barren, he contracted a second marriage, and brought his new wife home. The first wife Jankee resisted it, and leaving his house, complained to the Cast, who ordered him to allow her half the house, and Rupees 317 worth of ornaments. Appellant proposed to allow her Rupees 125 worth, as usual in the Cast, but they would not hear it, and expelled him. This was Appellant's story, but the Cast declared that he beat Jankee, stripped off her clothes and ornaments, and turned her out of doors, and moreover gave no intimation to the Cast of his second marriage. The custom of the Cast in such cases was, when the first wife had reached her fortieth year without bearing Children, to marry again with her consent; now Jankee

kee was quite averse to it, and they consequently insisted that Appellant should restore what clothes and ornaments he had taken from her, and allow her a house, on performing which conditions he might marry again, but as he had continued to set them at defiance they expelled him.

An agreement was exhibited which Appellant and Jankee jointly passed to the second wife, Kupoor, binding themselves not to behave ill to the two Children whom she had by her former husband, and who were to live with their step-father, Appellant.

The witnesses who proved this agreement, admitted that a second marriage required consent of the first wife.

The Shastrees, to whom the case was submitted, said that as they could not find any want of consent to the second marriage on the part of Jankee, when she was proved to have signed the agreement for well using the Children, and as the expulsion of Appellant under such circumstances was unwarrantable, that Appellant ought to be readmitted to Cast, and allowed to keep both his wives.

The Court however decreed, that Appellant should on satisfying his first wife and the Cast, be readmitted to its privileges, and not before. Decree 23d Sept. 1812.

The Provincial Court conceived this to be a case which did not call for its interference, or the interposition of its authority in subversion of that of the Punchayut of the Cast, and the Zilla Court's Decree, upholding the act of the Cast, was therefore affirmed. Court of Appeal, N. Crow, J. Smith. Decree 6th Feb. 1813.

No. 30.

N°. 30.

UMBASHUNKUR MUNGULRAM and the rest of the NAGUR BRAHMUN Cast..... } APPELLANTS,

VERSUS

TOOLJARAM DUYARAM, and OOMALUKMEE widow of OOTSAORAM,.... } RESPONDENTS.

Surat Udalut, S. Bourchier, *Judge.*

THE Appellants filed their action in the Surat Court on the 20th March 1812 claiming possession of a house and garden at Butlaee and a house in Surat, with other property bestowed on them in alms by Respondent Oomalukmee under a Sivarpun (or Deed of religious Gift in the name of Sivu) duly registered in the Udalut.

Decision annulling a Sivarpun, on the ground that as a former decision had fixed the succession to the property now given away, its alienation by the present possessor to any other person was illegal.

Respondent Tooljaram in answer denounced the Sivarpun, as fraudulently made by Oomalukmee with a view to deprive him of every chance he possessed of obtaining the property at her death, as next Heir to his Nephew, her husband Ootsaoram. It came out, that Oomalukmee had sued Respondent, and recovered from him this very property, and that the Court of Appeal affirmed the Decree in her favor, by another, reported as No. 3 of the Court of Appeal's decisions on Landed Tenures. As might from this be expected, Respondant Oomalukmee in her answer to the present claim, acknowledged the Sivarpun to be true and valid, and declared that it was drawn out with Respondent Tooljaram's free consent.

The Judge however held, that the Court of Appeal's Decree which declared " Respendent Oomalukmee entitled to enjoy the " property during her life time, leaving it afterwards to descend to " the nearest surviving male relation of her late husband Oot- " saoram," was a complete bar to any alienation of that property by Respondent Oomalukmee without consent of the Heir; that such consent not having been obtained, the Sivarpun was null

and

and void, and it was pronounced so accordingly in a Decree, dismissing Appellant's claim under it.

Decree 26th May 1813.

The Court of Appeal held that its former Decree clearly vested Respondent Oomalukmee only with a life interest in the property, she should have appealed, if dissatisfied with it. (1) The Court itself had no power now to enter into the merits of a question which had been already decided.. The right of succession to the property after her death could not be at present regularly enquired into, but would come to issue in case any other claimant besides Respondent Tooljaram started up after her death; but the property could not conformably to their former decree, be legally alienated by Respondent Oomalukmee to the injury of the lawful Heir, whoever he might prove to be. This Appeal for establishing the validity of her alienation of it in favor of Appellants was therefore dismissed.

Court of Appeal, N. Crow, J. Smith.

Decree 27th July 1813.

N°. 31.

PHOOLCHUND SOORCHNUD,.....APPELLANT,

VERSUS

UMURCHUND JOGEEDAS,.....RESPONDENT.

THE Appellant claimed a house, the property of his maternal great grandfather Kulyanchund, which had been seized on by Respondent. The latter declared that Kulyanchund was his maternal Grandfather, and he had better title to his Estate than Appellant, whose claim he totally denied.

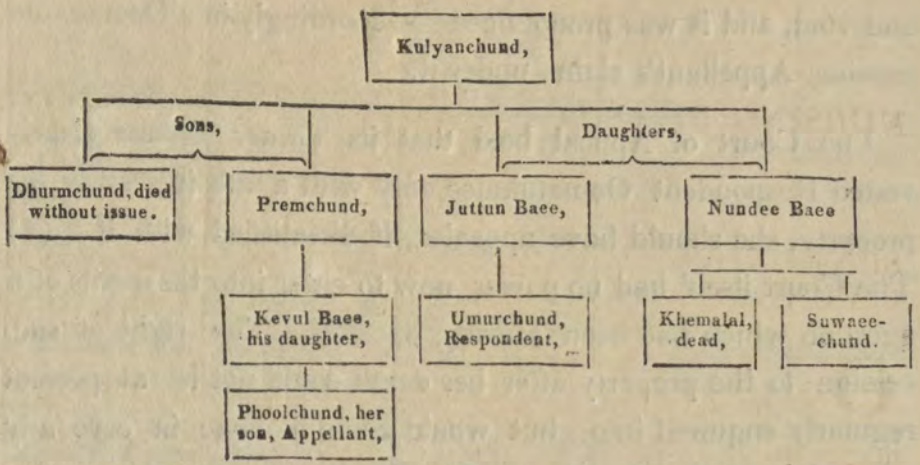
Surat Udalut, S. Bourchier, *Judge.*

A son's daughter's son preferred before a daughter's son.

The Genealogy, on which the dispute entirely hinged, was as follows.

Kulyanchund,

(1) Vide Bombay Cases No. 58.



The Shastrees of the Udalut declared that Umurchund and Suwaeechund were joint heirs to their maternal grandfather, Kulyanchund, and as such were entitled to equal shares of the house in dispute. The Court on this exposition threw out Appellant's claim deciding that he had no title to the house.

Decree 13th Nov. 1813.

Court of Appeal, N. Crow, G. L. Prendergast.

The Shastrees of the Court of Appeal however held, that at the demise of Kulyanchund his two sons were his Heirs, to the exclusion of his daughters, who had no title to inherit during the sons' lives; that Premchund became heir also to his brother Dhurmchund on his dying (united) without male issue; that Kevul Baee was heiress to her father Premchund leaving no son, and that Appellant Phoolchund was exclusive heir, after his mother, to all the property thus derived from Kulyanchund, his maternal Great grandfather. (1)

Decree 12th April 1814.

The Court, in conformity to this Vyuvustha reversed the Decree of the Zilla Court, and decreed Appellant legal Heir, and entitled to the whole property derived from Kulyanchund, in preference to Umurchund, who was declared not to be lawful Heir to the property in dispute.

No. 32.

(1) The validity of this depends entirely on the point, whether Kulyanchund died before or after his sons, for in the latter case, the daughters, and consequently their sons, would inherit before the son's daughter, or her son. Kulyanchund did die before his sons, therefore the Vyuvustha given in the Court of Appeal is correct.

No. 32.

NURSING BHANA.....*APPELLANT*,

VERSUS

SUNKURDAS MUKUNDAS and NARAYUNDAS KULYAN.....} *RESPONDENTS.*

Broach Udalut, J. Romer, *Judge.*

ON the 1st March 1814 Respondents laid an action of damages in the amount of Rupees 1176 against Appellant, to oblige him to complete the purchase of a house which he had contracted to buy of them. The facts of the case, as they came out in evidence, and were admitted by the Parties, were these. On the 13th Jesht Vud A. S. 1869 or 26th June 1813, Appellant's father Bhana, who had agreed to purchase the house in question for Rupees 1,200, executed a Sate Khut, or contract of sale, and paid down Rupees 25 as Beeana, or earnest money, the balance to be made good on the Execution and Registry of a final Deed of sale, within one month from that date. Part of the wall of the house fell down in the mean time, and Bhana at the end of the month, refused to complete the purchase, urging that it would cost him Rupees 200 to repair the house. Bhana died before Respondents could take measures to compel him to fulfil his contract, and they now came upon his son, Appellant, considering him bound to fulfil his father's engagements.

Respondents sought to enforce against Appellant a contract of sale executed by them to Appellant's father.

Appellant was allowed to annul it on the ground that Respondents' Ownership had not commenced because the price had not been paid, &c. but the Earnest paid by Appellant's father was declared forfeit.

The Court finding it established that the contract of sale was executed by Bhana, asked the law Officers, whether on the death of a purchaser after receipt of a Satekhut and delivery of earnest his son was liable to fulfil the engagement by completing the purchase, or not?

They answered, that since the intended purchaser had obtained possession of the Contract of Sale, and acknowledged it by payment of Earnest, his Ownership must be held to have taken effect;

effect; on his death the Heir was bound to abide by the agreement, and if he refused, the Prince must compel him to keep it. Should the Heir be unable to pay the balance, in this case Rupees 1176, then either he, or the seller, must dispose of the house to a third person, the proceeds going to the seller, to whom the Heir must make good any deficiency on the amount of the original purchase money.

This they deduced from two passages in the Mitakshura, the first, that quoted in note (5) to Surat Cases No. 36, the second, "A thing already sold may be resold to another, when the first "purchaser will not receive it. If a loss be incurred by the "fault of the first purchaser, it shall be borne by him, the pur-"chaser, alone." (1)

Under this exposition, Appellant, the Heir in this case, was declared liable to complete his father's purchase and take the house off Respondent's hands at the price agreed on, when he received from them a regular Deed of Sale. In default the house was to be sold by order of Court and Respondents satisfied, as pointed out by the Shastrees.

Decree 15th June 1814.

Court of Appeal, G. L. Prendergast, T. M. Keate, J. Sutherland.

The Court of Appeal found in this case, that the wall fell down before the time stipulated for completing the purchase of the house had expired, and that neither Appellant nor his father ever had possession of it. The Shastrees were therefore desired to state, whether the contract were annulled by the accident, or, if it must be at any rate fulfilled, upon whom the expense of repairs would in that case fall?

They said, if the purchaser please, the contract may be annulled, because neither had the term expired nor the price been paid, nor the buyer's ownership commenced, as the seller's right in the property was still untouched. There is a Rule, that when ten days have expired after the date of a purchase, the thing bought cannot

(1) Mit. Book second, leaf 82nd, page 1st, line 12th.

cannot be returned; (2) but it relates to purchases paid for, and does not apply to a purchase where the price has not been paid. It is declared in the Shastru (3) with respect to earnest, that if refusal originates with the purchaser, he shall lose whatever he has advanced as Earnest, and if with the seller, that he shall pay to the buyer double the value of what he has received as Earnest.

The Court on this reversed the Decree of the Zilla Judge, and annulled the contract of sale, adjudging Appellant however to have forfeited the Earnest money already paid, but granting him his Costs in both Courts.

Decree 28th March 1815.

No. 33.

KUPOOR BHUWANEE.....*APPELLANT*,

VERSUS

SEVUKRAM SEOSHUNKUR.....*RESPONDENT*.

RESPONDENT on the 22d February 1814 laid his action to recover from Appellant, a house, late the property of Poorshotum Kullal, which his widow Moolee gave in Krishnarpun to Respondent. The Deed was duly Registered; and after it, about a month and a half ago, Moolee died, and Appellant, her husband's Sister's son, laid hands on her whole property. This action was therefore laid to eject him from the house.

Surat Udalut, G. W. Anderson, *Assist. Judge*

Decree 9th Oct. 1815.

Krishnarpun by a widow affirmed against the claims of her husband's sister's son.

Appellant

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(2) Mit. Book second, leaf 70th, page 1st, line 1st.

(3) Mit. Book second, leaf 25th, page 1st, line 12th. "Differences respecting Purchases, "Sales &c. may be thus settled. When a" Ring or other thing "has been given into the "hands of another, and that person should retract from what has been agreed on, he shall "pay double. Thus, should he by whom the Ring has been given, himself declare off "from his agreement, it shall be lost to him. On the other hand, if the seller should de- "part from his contract, then shall that very ring or other thing be returned two fold." It may fairly be questioned whether *the Ring or other thing* does not mean the thing to be sold rather than the earnest for the sale of another thing.

Appellant pleaded that Moolee was the second wife of his Uncle, and that he had opposed the delivery of the Title Deeds to Respondent, and the execution and the Registry of the Krishnarpun by Moolee, who was not then in her sound senses; that he was entitled to the whole property as Heir to his Uncle, and Moolee had not power to make away his inheritance when he was alive and present.

Respondent called some witnesses to prove that Moolee was in her sound senses when she executed the Krishnarpun, and the Shastrees stated, that the widow of a person who died without male issue, was permitted to give away her husband's property in Krishnarpun, notwithstanding existence of his sister's son, by the commentary on the saying of Katyayunu, recorded on the subject of a Widow's succession in the Mŭyookh and quoted in the note to Bombay Cases No. 13.

Court of Appeal, G. L. Prendergast, T. M. Keate, J. Sutherland.

The Shastrees of the Court of Appeal assented to this doctrine provided the Widow or Donee had neither son or other near Heir of her own, whose rights would be affected by such Gift of their inheritance to another.

Decree 20th March 1816.

The Zilla Decree was therefore affirmed.

Note. This is a striking case, and quite conclusive as to the power of a Widow to alienate property. It is not the claim of an Heir to recover property already given away, and in possession of the Donee, but the latter sues the legal Heir enjoying his full rights over the property strengthened by possession, annuls those rights, and ousts him in virtue of a Deed of Gift. The succession of a Sister is declared legal by the doctrine of the Muyookh, and her son succeeds her. Vide Surat Cases No. 89 and the others referred to there.

N°. 34.

HURUK BAEE, Widow of WULUBDHAS HUREEDAS, suing on the part of her son NARAYUNDAS WULUBDHAS, } APPELLANT,

VERSUS

HURGOVINDAS son of JETHA BHAEE HUREEDAS, ... } RESPONDENT.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

APPELLANT laid her action originally against Respondent for Rupees 20,000 as her late husband's, and now her son's, half share of the Estate of Hureedas Narayundas, the common Grandfather of her son Narayundas, and of Respondent.

Decree 24th Oct. 1815.

A certain sum set apart for the maintenance of a Minor until his coming of age directed to be entrusted to his Mother as Guardian.

The lower Court decreed the share of the common Estate, as sued for, to Appellant, but reserved 5,000 Rupees worth of Jewels and ornaments, directing them to be sold, and the proceeds to be deposited with some respectable Merchant to be fixed on between the parties, he furnishing security for its safe keeping until the coming of age of Narayundas, for whose maintenance one Rupee per diem out of the interest was to be applied in the mean time. Appellant claimed amendment of the Decree so far as to place this property also at her disposal, urging that she could get no Merchant to take charge of it on condition of finding Security, for one and all urged that their credit as Merchants was taken as sufficient security by the world, and ought to be so held by the Court, at least if it were not, they had no better to offer, and would not receive the deposit on other terms than their own personal security—Appellant required the amount to be placed at her disposal at once on her furnishing security.

Court of Appeal, G. L. Prendergast, J. Sutherland.

The Law Officers stated, that a boy under 16 years of age is unfit to take charge of his Estate, and that the Shastru constituted,

stituted, as his Guardian (Nath) until that time, any confidential person, or persons, or his mother, or a near relation. (1)

Decree 25th July 1816.

The Court of Appeal under this Vyuvustha amended the Decree by adjudging the property to remain in charge of Appellant Huruk Baee, in the same manner as she had obtained charge of the rest of her son's share of the Estate.

N°. 35.

HURJEEVUN LALDAS,.....APPELLANT,

VERSUS

BHIKAREE NUNDLAL,.....RESPONDENT.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

THIS action was laid by Respondent in the Surat Udalut on the 5th July 1814, and was as follows.

Claim against Appellant, an old Kumavisdar out of employ, to oblige him to make good certain deficiencies in the payment of the Modee Khana supplies.

Admitted by the Zilla Court, but disallowed by the Court of Appeal, because the Modee Khana accounts were never under Appellant, & he was now unable to realize the amount due.

Appellant was Kumavisdar of the Chiklee Purgunna from A. S. 1858 to 68, and Respondent resided at Chiklee, being by profession a Modee, or Retail shopkeeper, and during the years 66, 67, and 68, was employed to supply the Government servants &c. &c. &c. with necessaries which he furnished to the amount of Rupees 3,457-2; of this he recovered Rupees 2,293-2, leaving a balance of Rupees 1,164-0-62, which was increased with interest to Rupees 1,375-0-62, which he now claimed. The accounts of the Modee Khana, or Department of supplies, were kept by the Muzmooadars under the native Government, and superintended by the Dessaees of the Purgunna; in that of Chiklee there are 22 Dessaees, and at the end of the year, when the Modee Khana accounts were made up, under the head of Sadir Vera, or Tax for supplies, the amount was divided out among the Dessaees, of whom each gave the Modee

(1) Vide Surat Cases No. 27.

dee orders for his share upon his own Villages, and the Modee realized them as he could.

The Appellant's defence in this instance was, that he never during the ten years he held the Purgunna had any thing to do with the Moodee Khana, or Sadir Vera accounts, which were entirely under the Dessaees, and they were accountable to Respondent, more particularly since he himself was not now in office, and could not assist Respondent in realizing the balance still due from the Villages.

The Court asked the Collecter whom he thought responsible for the balance, Rupees 1,164-0-62, found to be still due to Respondent?

He answered, that the Sadir Vera of the years specified was made by the Kamavisdar and Zumeendars without his authority, but as some deduction in account was always allowed for village expenses, the amount due to Respondent ought to be recovered in their fair proportions from the parties who had charge of the different Villages for these seasons. The Court however held that the claim clearly lay against Appellant, and he was ordered to pay Rupees 1,272, or the sum sued for.

Decree 11th May 1816.

The Provincial Court thought there was no reason shewn why Appellant, if sued ex-officio, should be answerable in his own person for Balances avowedly outstanding against the Villages, and which since his removal from office he had no means of recovering. On the other hand, to make him liable as for a personal debt, it should have been proved that he had actually made the collections, for there was no assignable reason why he should have left any such balance outstanding as he might be called on to make good after his administration. For these reasons the Assistant Judge's Decree was reversed and Appellant declared free from any claim of Respondent on this Account.

Court of Appeal, G. L. Prendergast, T. M. Keate, J. Sutherland.

Decree 5th March 1817.

No. 36.

N°. 36.

KASEE DHOOLLUBH,.....*APPELLANT*,

VERSUS

RUTI UN BAEE, daughter of KUCHURA,....*RESPONDENT.*

Surat Udalut, G. W. Anderson, *Assist. Judge.* Barber Cast.

THE Appellant on the 22d December 1815, filed this action against Respondent, his betrothed wife, to compel her to come to his house with her Dower Jewels &c. and to cohabit with him agreeably to her plighted troth.

Divorce granted to a woman of this Cast, on account of her husband's dissolute life and bad character.

She pleaded, that a Divorce had been made between herself and Appellant in consequence of his bad conduct and Character; that bad conduct was in their Cast admitted as a valid ground of Divorce, and Appellant had been more than once convicted before the Criminal Court of drunkenness and stealing, had been flogged and confined, and was fixed in vicious courses. With respect to the Pulla, she said that it had been given up to the Gour of the Cast for Appellant, and he had no claim left on that score.

The Court first ascertained from the Shastrees, that if the custom of a Cast permitted Divorce for bad conduct of one of the parties, such custom must be upheld, though the Shastru admitted no Divorce in any case.

The Cast was then called on through their Gour Gopal Bhut, and they declared unanimously, that Divorce was allowed, by their Rules to a Woman, whose husband was dissolute and depraved, but not otherwise; that this had been practised from the earliest times and was never disputed by any of the Cast before. They likewise proved the bad character of Appellant which was established by the records of his disgrace brought from the criminal Dufturs against him.

Decree 31st Dec. 1816.

The Court therefore dismissed Appellant's claim for his Wife's services,

services, and pronounced the Divorce good and valid, referring him to an action against Gopal Bhut for the Dower Jewels.

This decision was affirmed by the Court of Appeal.

Court of Appeal, G. L. Prendergast, J. Sutherland. Decree 25th July 1817.

No. 37.

DAEE, Widow of HUREE BHAEE, ... APPELLANT,

VERSUS

POORSHOTUM GOPAL, ... RESPONDENT.

Surat Udalut, G. W. Anderson, *Assist. Judge.*

Beesa Vaira Bunyuns.

A widow's claim for her husband's Estate disallowed on account of her blindness, but a maintenance for life awarded her.

APPELLANT, a blind woman, on the 31st May 1816 laid an action against Respondent for Rupees 1500, as the valueof her late husband's Estate, seized on by his Nephew, Respondent. It appeared that the Uncle and Nephew shared the family Estate at a former period, and that the Uncle left Appellant in possession of his share and went to Gokool Muthoora, where he died and that Respondent then took possession of his property on plea of being his Uncle's heir.

Respondent of course denied any division of the family Estate between him and his Uncle, whose lawful heir he claimed to be, as well as Guardian to his wife, Appellant, whom he said he was ready to maintain.

But Appellant clearly proved the fact of division by Arbitrators, exhibiting the Deeds of Division drawn up by their intervention.

The Court asked the Shastrees whether Appellant could succeed to that share of the family Estate, which at the division fell to her husband?

They answered, that whether the Uncle and his Nephew, Respondent, had perfectly divided their family Estate, or not, the Uncle's widow had no right to claim her husband's share by reason of her blindness, which formed a complete disqualification

fication according to the Shastru (1) Respondent or the Heir was however bound to maintain and clothe her during her life in a respectable manner, according to the verse of Munoo (9th 202) quoted in the Mitakshura (2, " It is fit that a wise " man should give all of them" (the impotent man and the rest) " food and raiment *without stint* to the best of his power, for he " who gives it not shall be deemed an outcast."

Decree 12th March 1817.

According to the exposition, the Appellant's claim was dismissed.

Court of Appeal. J. Elphinston, J. Sutherland. Decree 13th March 1818.

The Shastrees of the Court of Appeal concurring generally in opinion with those of the Zilla Court, its Decree was affirmed, a provision being expressly made for Appellant's maintenance.

N°. 38.

LUKMEERAM, POORSHOTUM, and BALMOOKOOND, Sons of ASARAM, with ROOPA, his Widow..... } *APPELLANTS,*

VERSUS

KHOOSHALEE, Widow of Ichharam; with JUGDEESH MUDUN..... } *RESPONDENTS.*

Surat Udalut, G. W. Anderson, *Assist, Judge.*

THE Appellants on the 24th May 1813, laid an action for Rupees

(1) Mit. Book second, leaf 60, page 1st, line 13th," An impotent person; an outcast and " his issue; one (helplessly) lame, a mad man, an idiot, a blind man and a person affected " with an incurable disease, *as well as others* similarly disqualified, must be maintained; " excluding them, however from inheritance "—Cole. Mit. Cap. 2d Sec. 10th.

(2) Book second, leaf 60, page 2d, line 4th. Cole. Mit. Ch. 2d, section 10th, para. 5, The commentary on the passage declares " *without stint* to signify for life" and further on " (Para; 8th) says, " The masculine gender is not here used" (by Munoo) " restrictive " ly in speaking of an outcast and the rest—It must therefore be understood that *the* " *Wife*, the daughter, the mother, or any other female, being disqualified for any of the " defects which have been specified, is likewise excluded from participation." The Shastrees might have quoted this whilst they were on the subject, Vide Note (2) to Bombay Cases 17.

Rupees 525, against Respondents, the subject of which was as follows. Nagur Atmaram possessed five houses, two of which he bestowed in Sivarpun on his Sister's son Asaram, the father of Appellants; two he gave to his Brother's son Ichharam, the husband of Respondent Khooshalee, and the fifth, having been retained by him for his own use during his life, he directed to be sold at his death and its proceeds to be employed in celebrating his obsequies; when that event occurred, the fifth house also fell into the hands of Ichharam, whose widow had now got it, and the Appellants wished to prevent her from disposing of, and Respondent Jugdeesh from purchasing, the other two houses which her husband had received from his Uncle Nagur, Appellants urging that the tenor of the Deed of Gift did not permit her to sell them, because it gave free ingress and egress to Appellants, with a right to the water of a tank on the premises, which rights were incompatible with those of another purchaser.

A widow may alienate, for her lawful occasions, houses or real property inherited from her husband, with reservation of the rights possessed by any other persons in the same.

Respondent Khooshalee pleaded, that her husband was the legal heir of his Uncle, and had a perfect right to the third house, since he performed the conditions for which it was left; that he received the other two in free Gift, and she, as his lawful heir, had a right to dispose of them, as she intended to pay the debts of her husband and of his Uncle also.

The Court finding these to be the facts of the case, required the Law Officers to say whether the sale of the Houses by the Respondent Khooshalee to Jugdeesh were compatible with the clearly defined rights to the water and use of the premises which Appellants possessed?

They answered that the Gift of the two houses to the Appellant's father was valid, as was that of the other two to Respondent's husband, because he was the legal heir of the Donor. These would descend after his death to his wife, if he left no Son, and she might dispose at pleasure, either in ceremonies for the benefit of her late husband's soul, or in discharge of his debts or in complete preparation for a pilgrimage by herself, of the

the two houses being the undoubted property of her late husband: and although the Deed of Gift declared the Sister's Son Appellant's father, entitled to as much drinking water as he required from the Tank belonging to the houses given to Respondent's husband, and bound him to pay half the expense of its repairs, yet such indulgence gave him, and consequently his heirs (Appellants) no right of property in these two houses which the Brother's Son, Ichharam, and his heirs were at full liberty to sell. It was further their opinion that the Deed of Gift gave the Sister's Son no right to the Tank because it was not situated within the bounds assigned in the Deed to their premises, and its validity as a religious Deed of Gift was also shaken, by a clause in it, declaring the Brother's Son heir in reversion to the two houses given to the Sister's Son.

Decree 29th March 1817.

The Court dismissed the claim of Appellants, and left Respondent at liberty to sell the house to whom she pleased.

Court of Appeal, J. Elphinston, J. Sutherland.

The Court of Appeal referring the same question to their Shastrees, received for answer, that Respondent Khooshalee as Widow of the Brother's son, was at liberty to sell the two houses for the purpose of defraying his funeral expenses or paying his debts, but not otherwise, though she might at pleasure sell them with any good and religious object in view.

Decree 17th March 1818.

The Court altered the Zilla Court's Decree, amending it by reserving to Appellants the rights pertaining to them in the Tank and use of the premises, as reserved in the Deed of Gift.

Note. This case is conclusive, as establishing the power of Sale, Gift, or Mortgage of Real property, unless for a bad purpose, to vest in widows, as laid down in note to Bombay Cases No. 13. See however this succeeding Case of,—

N°. 39.

RAMKOONWUR, Widow of POONJIYA BHUWANEE,..... } APPELLANT,

VERSUS

UMMUR, Widow of BHUWANEE, and HUREE BHAEE WASTA..... } RESPONDENTS.

Surat Udalut, G. W. Anderson. Assist. *Judge.*

Lowa Koonbee Cast.

APPELLANT, the Plaintiff in the Zilla Court, sued to compel Respondent Ummur, her husband's step-mother, a widow, to account for the family property, which she was charged by Appellant with squandering away although the greatest part of it had been acquired by Appellant's own husband.

The precedence of a Widow or of her daughter-in-law, depends on priority of the date at which their respective husbands died.

Respondent Ummur pleaded in defence, that Appellant, the Widow of the son, had no right whatever to the property of her father-in-law, which descended by law to herself, his widow.

The Court asked the opinion of the Shastrees upon the Case, the facts of which were, that Bhuwanee, who died two years ago, left at his death Respondent Ummur his Widow, who was childless, and the wife and daughter of his son, who had died about five years before his father.

The Shastrees declared that the Widow (Respondent) was Heiress to the property, if actually her husband's, but that if it belonged to the son (by his own acquisition ?) the Appellant, as the Widow of that son, would inherit in preference to Respondent Ummur.

Decree 7th July 1817.

The decision was, that Appellant not being Heiress to Bhuwanee, her claim was not valid, and it was thrown out.

Appellant

Court of Appeal, J. Elphinston, T. M. Keate, J. Sutherland.

Appellant took advantage of the opinion of the Zilla Shastrees, to press upon the Court that the property was chiefly acquired by her own husband, and that he made a Will in her favor, which he at his demise delivered to her father-in-law, Bhuwanee, who was to give it her with all property at his death, provided she had not contracted a second marriage.

The Provincial Court, proposing the same question to their Shastrees, received answer, that Respondent, the Widow of Bhuwanee, was Heir to his Estate; then Appellant, the Widow of the son, and after her Appellant's daughter. The Respondent was however bound to maintain Appellant, and as the latter and her daughter were heirs in reversion, Respondent had not the power to sell, give, or mortgage, the real property of the family.

Decree 19th June 1818.

The Court therefore amended the Zilla Decree by adjudging "that so long as the family property should be held *in trust* by "Respondent Ummur, the Appellant should be allowed a house "and Rupees 3 per month for food and clothing.

Note.

It is doubtful how far the use of the term "*in trust*" is borne out by the letter or spirit of the Hindoo Law; the point has been much contested among writers on the subject of a Woman's succession, and it seems dangerous to determine it either one way or the other, unless supported by some express authority, and after mature consideration or discussion. A trust might seem to imply a surrender to the next heirs at some period short of the Woman's natural life, unless the term be synonimous with "life interest."—In this way, even a father by Hindoo Law has only a trust of ancestral property during his own life, as is clearly the doctrine of the Mitakshura; see Notes to pages 69 and 371 of this Volume, and Mr. Colebrooke's translation of the Mitakshura, Ch. 1st Section Fifth, entitled "Equal rights of father and son in property ancestral," page 276.

The

The principle on which the Vyuvustha in this case may seem to hinge, is, "that if a son die before his father, the father's lawful " wife will succeed in preference to the son's widow, but if " the *father died first, then the son's wife is Heiress on her* " *husband's* death, and the mother-in-law gets only a mainte- " nance." This, if established, would be the means of deciding at once the many quarrels which occur between mothers and daughters in law. See the Vyuvustha of the same Shastrees at Page 448 of Vol. 2d, in a case decided by the Court of Appeal, and its confirmation by them again at Page 454, as Shastrees of the Sudur Udalut. Sir F. Macnaghten has a parallel case in the 1st Page of his " Considerations on Hindoo Law," but in consulting his work we must bear in mind the caution he himself gives us in the Title page, that it is the Hindoo Law, *as current in Bengal.* When compared with the doctrines of the Mitakshura, which is now admitted as the standard of Law here, his work will be found to differ in many points, because founded on the doctrines of the Bengal school. It must be remarked, that the order of Inheritance laid down therein, applies only to the case of a man separated from his family or brethren, and dying without male issue. This order of Inheritance is at variance with that of the Mitakshura, which is our guide (" The wife and the daughters and their sons also)" vol. 1st page 160, 2d 427, and elsewhere, but the principle alluded to regulates both Codes equally.

It is said that the second Marriage of Respondent, as denoted by the word Natra used in the original papers, would deprive her, as a twice married woman, of all rights during the life of her daughter-in-law, Appellant, her step-son's widow.

The point is a very material one, if it is to have the effect of destroying a Widow's otherwise valid title to inherit, and cannot be too strictly attended to.

No. 40.

N°. 40.

LAROO, Widow of SHAMJEE.....*Appellant.*

VERSUS

MANIKCHUND SHAMJEE,.....*Respondent.*

Surat Udalut, J. Romer, *Judge.*

Bhatiya Cast.

Claim by a man against his stepmother to obtain a half of his father's Estate, leaving the other half to her son, his younger brother.

Granted, after deduction of a twelfth share of the whole for their sister's Dower, and a suitable sum for the brother's Marriage, but disallowing any for obsequies celebrated by the stepmother or the other son.

THIS Action was laid in the Zilla Court on the 4th December 1816, by Respondent against his step-mother, Appellant Laroo, and Jumna, her Sister, to oblige them to give him a half share of his father Shamjee's Estate, or Rupees 790, leaving the other half to his brother, son of Laroo, the Appellant, who pleaded in defence that Respondent's mother had been divorced for Adultery, Respondent himself disinherited for theft, and that the whole Estate of Shamjee devolved to herself, his second wife, and to his son by her.

The result of the investigation, as submitted by the Court to the Shastrees, was, that Shamjee had two wives still living; by the first, named Premkoonwur, he had Respondent Manikchund, by the other, a son Bhuwaneeshunkur, then four years old, and a daughter Man Baee, of three; Shamjee during his life furnished his son Respondent's marriage, but set apart nothing for the marriage of his other son and daughter, and the Shastrees were asked to state who among the three children and the widow of Shamjee, was Heir to this property, and in what proportions it was to be divided, and who was to furnish funds for the marriage of the Appellant's two children, and to give away the Girl?

They

They answered, that both the sons being joint heirs, were bound to furnish their Sister's Dower out of the family property, to the extent of a twelfth share of the whole. On the unmarried son Bhuwaneeshunkur's marriage, a suitable sum was to be expended out of the common Estate, the balance to be divided between the brothers, each maintaining his own mother. (1)

It further came out on the trial, that Appellant had under pretence of furnishing her husband's funeral, contracted a debt to Jumna; any expenditure on this account by her was declared to be illegal during the life of her step-son, Respondent, and no deduction was to be allowed her for it out of the Estate. The half of the property was decreed to Respondent as sued for, after provision made, agreeable to the Vyuvustha of the Shastrees, for the marriage of Shamjee's other children.

Decree 30th July 1817.

The Court of Appeal, finding the case to depend on a point of Hindoo law, referred to their Shastrees the same question that was proposed to those of the Zilla Court, requiring them also to state whether the funeral expenses incurred by Appellant, might be

Court of Appeal, J. Elphinston, T. M. Keate, J. Sutherland.

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(1) Mit. Book second, leaf 51st, page 1st, line 8th, and following. "If any of the "Brethern be uninitiated, when the father dies, who is competent to complete their ini- "tiation? The author replies: Uninitiated Brothers should be initiated by those, for "whom the ceremonies have been already completed."

"By the Brethren, who make a partition after the decease of their father, the uniniti- "ated Brothers should be initiated at the charge of the whole Estate."

"In regard to unmarried sisters, the author states a different rule: But Sisters should "be disposed of in marriage, giving them as an Allotment, the fourth part of a Brother's "own share."

"For example, if a certain person had only a Brâhmani Wife, and leaves one son and "one daughter; the whole paternal estate should be divided into two parts, and one such "part be subdivided into four; and, the quarter being given to the Girl, the remainder "shall be taken by the son. *Or, if there be two sons and one daughter, the whole of the fa- "ther's Estate should be divided into three parts; and one such part be subdivided into four: "and the quarter (of this third, or the twelfth of the whole) having been given to the Girl, "the remainder shall be shared by the sons.* But if there be one son and two daughters, "the father's property should be divided into thirds, and two shares be severally subdi- "vided into quarters: then, having given two quarter shares to the Girl, the son shall "take the whole of the residue. It must be similarly understood in any case of an equal "or unequal number of brothers and sisters, alike in rank." Cole. Mit; Ch. 1st, Section 7th, paras: 3d, 4th, 5th, and 7th.

be defrayed from the common Estate, as well as what Respondent had laid out?

They answered, that the initiation of the son left uninitiated at his father's death, must be celebrated out of the common property by Respondent, the eldest and already initiated son. Agreeing with the Zilla Shastrees on the portion to be allotted for the daughter's initiation, or marriage, and on the division of the balance of the estate, they declared, that performance of funeral ceremonies belonged exclusively to the eldest Son, who was to celebrate them out of the common property, and if the younger Son took upon himself to perform them when his Brother was present, he could not be allowed remuneration, or deduction out of the estate. (2)

Decree 3d July 1818.

The Court of Appeal affirmed the Decree of the Zillah Court.

No. 41.

BUNMALEE SHEOLAL and others,..... APPELLANTS,

VERSUS

BHIKA VENEE and others,..... ....RESPONDENTS.

Surat Udalut, W. A. Jones, *Assist. Judge.* Koondeegur Jumaut or, Calendrer's Company.

THE action was laid by Appellants with a view to recover damages from Respondents for expulsion from Cast. The parties all belonged to the Koondeegur Jumaut, or Calendrer's Company, and the offence charged against Respondents was that of omitting to invite Appellants to a feast and thereby causing their expulsion.

Claim by Appellant for the privileges of the Company; disallow-

Respondents declared that they had neither expelled Appellants

(2) Vide Bombay Cases No. 31.

pellants from board nor trade, for they had never been regularly admitted as members of the Jumaut, from unwillingness to conform to a Custom of the trade, that of paying certain fees on the admission of a new member; Respondents declared themselves ready still to admit Appellants on their paying these fees.

ed on proof that they had never paid their admission fees.

A paper of Articles of the 7th Posh Sood 1865, entered into by the Jumaut for fixing the price of calendering the different Cloths, was exhibited to shew that Appellants were not at that time in the Jumaut, because their signatures were not affixed to the paper.

The Court however held the Appellants' admission to have been complete, and Respondents not entitled now to recover the fee, because they had neglected to secure it before they ratified Appellant's admission by eating with them. The Respondents were ordered to admit them to all privileges of trade, the Costs of suit being paid, by each party their own share.

Decree 26th Feb. 1818.

The Appellants being dissatisfied that the damages sued for and the whole of their Costs were not also awarded to them when their readmission to the Trade was decreed, appealed against this decision.

Court of Appeal. J. Romer, J. Sutherland.

The Court of Appeal thought that the declaration of Respondents, the Majority of the Jumaut, "that Appellants were "not members of it because they never had paid the necessary "fees of admission," was more to be relied on than the bare assertion of Appellants to the contrary, unsupported by proof, and a nonsuit was passed against Appellants, declaring Respondents borne out in the act of exclusion and awarding them full Costs in both Courts.

Decree 4th March 1819.

N°. 42.

NARAYUNDAS SOORJEE.....*APPELLANT*,

VERSUS

PATEL KALEEDAS WUSUNDAS and others.....} *RESPONDENTS*.

Kaira Udalut, G. W. Anderson, *Judge*.

APPELLANT on the 24th February 1818 sued to prove his right to demand a fee for the use of a certain well called Ranwala situated within the limits of the Town of Nureead, and stated to be the property of Appellant.

Claim by the owner of a well for a fee upon every Bheegha of land watered from it.
Granted generally, but with an exception in favor of a certain portion of the whole land belonging to Respondents.

He said that many years ago Patel Lukka, having seven sons, gave to each of them a house and a well, that this very well was one of those belonging to Lukka, and fell to the lot of his son Lantha, who adopted one Hurjee who succeeded to it with the rest of Lantha's property, and from him it came to Appellant.

Respondents denied that he possessed any proprietary right to the well, which they said had belonged them for eight descents, and Appellant had merely a right to draw water for a Beegha and half of land from it.

The Court deduced from the evidence, that the well was calculated to water 60 Beeghas of the surrounding land, out of which Respondents possessed 35½, which they had accordingly watered from this well free from all imposts in the shape of fees, but subject to charges in that proportion for its repairs; that Appellant held one and a half Beegha, and no more, but that he had been in the habit of receiving a fee for irrigation, of one Rupee per Beegha, upon the remaining number of Beeghas, which belonged to the inhabitants of the Chklasee Bhagul of Nureead.

The Decree was, that Appellant was entitled to levy a fee of

one

one Rupee for every Beegha beyond 35½, the quantity belonging to Respondents watered from the Well in dispute, the expense of its Repairs being defrayed in equal proportions by the sharers in it.

Decree 27th March 1818.

This decision was affirmed by the Court of Appeal.

Court of Appeal, J. Elphinston, J. Romer, J. Sutherland, Decree 8th April 1819.

N° 43.

DHOOLLUBHDAS BRIJBHOOKUNDAS, *APPELLANT*,

VERSUS

LARKOONWUR Widow of BRIJBHOOKUN, and Daughter of ANUNDRAM, } *RESPONDENT.*

THE Action was filed on the 13th February 1818 by Appellant who wished to prevent Respondent, his Step-Mother, from getting possession of her Dower Jewels valued by him at Rupees 1,200 with Rupees 900 worth of ornaments more, then lying entered as a deposit with a Suraff named Dhoollubh Narayundas, by her husband, his late father, under the name of Vur Kunya, Bridegroom and Bride, that is to say, as Dower. In vindication of his right to prevent Respondent getting it, Appellant urged that the custom of their Cast did not empower a woman to take possession of her Pulla, but only to receive the interest of it, and that even if it did, the usual value of Pulla was only Rupees 600, so that Respondent was not entitled to take the whole of the deposit out of the Suraff's hands, wherefore he prayed an injunction to her to abstain from demanding, and to the Suraff to retain the ornaments, until decision of this Suit, which Appellant hoped would be in his favor, declaring that he was willing to find Respondent in food, lodging, and necessaries.

Surat Udalut, W. A. Jones, *Assist. Judge*,

Dusa Poorwal Bunyans.

Right inherent in a woman to employ her Dower for her own use without being subject to control of relations, so long as she spends it in a reasonable manner.

Excessive Dower sanctioned by old age in the bridegroom.

Respondent answered, that there was no settled value for Dower

Dower in their Cast, but that her late husband, being at the time of her marriage 65 years of age and having two sons, Appellant and a Younger one, by his two former wives, agreed with her father through the Nyat Gour, to give her Rupees 3,500 worth of ornaments as Pulla, as an inducement to her to contract so unsuitable a marriage. (1) Out of this, he gave down 300 Rupees worth of ornaments, deposited Rupees 900 in Cash with the Suraff, and gave a Promissory Note for Rupees 1,700 more. She said this note was still unpaid, and she had a claim pending against Appellant on that and other accounts. She was not dependent on his bounty; but had a clear and undoubted right to a lodging and maintenance &c. exclusive of this Cash in deposit, with which she intended to make up ornaments for her person.

A Sreemalee Brahmun, the Gour of the Cast, proved Respondent's statement to be correct, but in opposition to this Appellant called Members of the Cast who declared "that the amount of "Dower varied from 200 to 600 Rupees, to be paid down before "the marriage either in ornaments or cash; if the latter, to be "put out at interest for the wife's use; Dower to be kept by "her when a widow, or by her father, if she be still an infant, "and to be inherited by her own legal heirs, since it belonged "wholly and solely to her."

They all declared their ignorance of any rule when there was great disparity of years between the man and wife, but one supposed it to depend on the agreement made at the time, whilst all admitted that the son, or step-son, had no right to take or claim a widow's Dower.

Respondent produced a Decree given against Appellant in a suit filed by him against his own father, her late husband, for half of a Legacy left to the latter; referred to two Decisions of the

(1) Vide the foregoing No. 17.

the Court of Appeal (being Nos. 5 and 10 of this set of Reports) and called three members of the Cast, who agreeing generally with the others, asserted that old age in the Bridegroom positively sanctioned an increase of Dower, adducing instances in support of the fact.

The Court Decreed that Appellant had no right whatever to claim this property in deposit, because it was the sole property of Respondent, and his suit for it was dismissed.

Decree 26th Sept. 1818.

The Shastrees of the Provincial Court were desired to declare who, of the parties, had a right to this Dower in deposit?

Court of Appeal, J. Elphinston, J. Romer.

They thus answered, The Woman (Stri) has full power over the Pulla, whether in Cash or ornaments, but after the death of her husband if any one of her husband's family (Putipukshu) in quality of heir, claim to maintain her, then he may, after giving up for her use such ornaments as her respectability requires, put in deposit the value (Rupeya) of the remainder, but no one can prevent the woman from spending the interest of it in religious Offices, and she also is at liberty to spend any part of the principal for good purposes after her husband's death. Whatever balance of the Dower may remain at her death devolves to her Heirs. (2) The Court thereupon amending

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(2) Compare this with the Vyuvustha, (or rather opinion, if Vyuvustha means an Exposition of Law,) of the very same Shastrees in No. 28 of the Bombay Cases, with which it is completely at variance. I there hinted that the rule of 30 years was not to be found in the Shastru, and here they of their own accord virtually declare their former opinion wrong. Between two expositions so decidedly contrary, when a distinct passage of law verifies the last, and the Shadow of an authority is not to be found for the first, there cannot be much difficulty in determining that the last is the only valid decision of the two. When it is remembered that all the Courts implicitly follow the fiat of their Law Officers, it will not be saying too much to declare that no decision founded on a Vyuvustha is valid further than the Vyuvustha itself, as an exposition of good law, bears it out. That their former opinion was not law, the Shastrees themselves have proved; consequently the decision founded on that opinion is invalid, and the power of a woman over her Dower must be admitted. With respect to the present case, it may be said, that when a woman in need demands a maintenance from her step-son, he is bound to afford it, but she cannot be obliged, as from the Vyuvustha it would appear she can, to receive a maintenance &c. when forced upon

Decree 17th June 1818.

amending the Zilla Court's Decision, decreed, that on Appellant binding himself to find Respondent in subsistence, raiment, and place of abode, suitable to her rank, the existing balance of the Pulla, which originally was Rupees 800, be replaced in deposit, the Respondent taking credit on rendering an account for any part that may have been expended, in conformity with the prescriptions of the Shrastru as hereafter explained; "that "the interest of the amount of Pulla deposited be held applicable "to the calls of Respondent for the purpose of ordinary charities, and the principal for extraordinary charities, such as pilgrimages."

No. 44.

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upon her for the sake of creating dependence. The Policy of preventing a Woman from squandering away her property is not to be questioned. I only aim at pointing out the ill effects of allowing Law Officers to give an opinion of expediency, or to lay down the Policy of a particular line of decision, when they are called on to declare a positive law.

It is but fair towards them however to quote the following passage from the Dissertation on the nature of justice in the commencement of the Mityokhu, "Bruhusputi, a decision must however by no means be given solely on the authority of the Shastru, for if "the case be considered without reference to general principles of right and wrong, the "Established Rules of society will be destroyed. That the Customs of the Country &c. "must be fully attended to is clear, for Bruhusputi says, Let all Rules of each country, "Cast, and people" (or family, that have been derived and preserved from ancient times) "be still preserved in the same way, for in default the people will rise in rebellion;" (note (7) to Bombay Cases No. 14) "discontent will be produced among mankind, and the "army and the treasury, will suffer injury. The daughter of the mother's brother is taken "in marriage by the Dvij, or Brahmuns in the Dukhun. In the Mudhyu Deshu, those "following their own professions, as well as Artizans, are eaters of kine and other" (animals or things?) "and in the Poorub the men eat fish, whilst their women are notorious "prostitutes. In the north, their chief delight is drinking intoxicating liquors, and "women in their courses are by the men there considered fit to be touched. These people "are not deserving of Penance, or punishment, for such acts as these" (The commentator adds), "The Poorubees are the same as the Prachyus, but in some Copies they "read *surve*, *all*, for *Poorue* that is, *all* classes, Brahmun and the rest. Punishment means "legal correction. Some one declares, What is laid down by law as the Penance &c. for "such acts, does apply to them when committed in Countries which are not included "among the abovementioned. But some one again says, If punishment is to be construed of the nature of Penance, the people of the exempted country alone will escape legal "punishment, but in other countries both legal punishment and penance will ensue."

N°. 44.

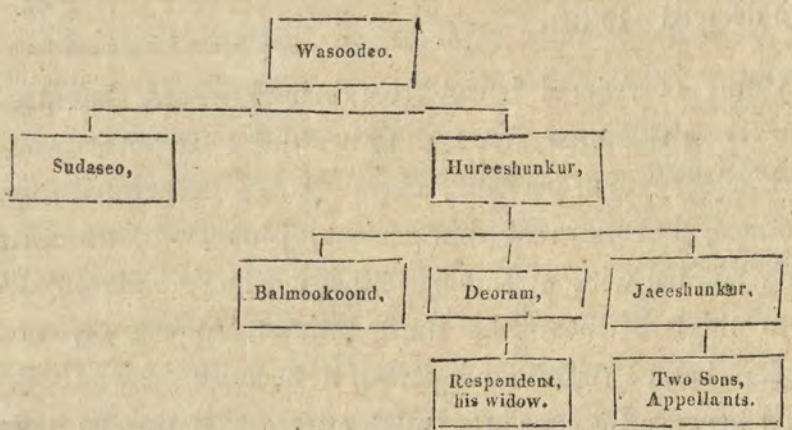
PRANSHUNKUR and HUREEWU-LUBH, sons of JAEESHUNKUR..... } *APPELLANTS,*

VERSUS

PRANKOONWUR, alias RUTTUN, Widow of DEORAM..... } *RESPONDENT.*

Surat Udalut, W. A. Jones, *Assist. Judge*, Cast of Rayukwar Brahmuns.

ON the 27th March 1818 Respondent laid her action to recover from Appellant Rupees 525, being the Share due to her on the part of her husband, out of certain Yujman fees belonging to the family, who were Gours to the *(Koonbee ?)* Cast.



The childless widow of a separated brother is Heiress to his own Estate, but has no right to a share of the Estates of his brothers dying after him.

Respondent stated that the two sons of Wasoodeo divided the whole of their Paternal Estate, including their Yujmans; that the three Sons of Hureeshunkur in like manner divided their father's half of the Estate, but left the Yujmans in common, dividing the proceeds of their fees only, at certain periods into three Shares; the three brothers were now all dead, Balmookoond the last of them dying about 2 years ago without wife or issue. Respondent had demanded her half of the produce of the common fees, levied by Appellants, but they refused to allow her any, so she now claimed, Rupees 200, the value of her half share of Balmookoond's property; Rupees 100 her share for the two last years of his fees detained; Rupees 100, share

of

of his household effects and clothes; and Rupees 125, balance still due as her late husband's share of the Yujman fees, total Rupees 525, sued for.

Appellants pleaded in answer, that although the three brothers had separated, they alone were heirs to Balmookoond, because Respondent being childless was debarred from claiming in her own right a share of the estate of the divided brothers.

The Court found that the three brothers had separated, and therefore that Respondent was entitled to share with Appellants in the property of Balmookoond, as well as to receive her own husband's share of the Yujman fees; the property sued for was therefore decreed to her.

Decree, 6th January 1819.

Court of Appeal, J. Elphinston, J. Romer, Interlocutory Decree 27th July 1819. J. Romer, J. Sutherland.

The Court of Appeal learnt from their Shastrees, that Respondent, though childless, was Heir to her husband's property obtained, whether real or personal, because he had separated from his Brothers, but the real and personal property of the other Brother who died without leaving either a wife or children, devolved to the two sons of the third brother, Appellants, and Respondent had no right to any part of it, because she was childless, and because the sons of a Brother are declared to be heirs (on failure of the wife, daughter, her son, parents, or a Brother) of a man dying separated without male issue. (1)

The Provincial Court on this, by an interlocutory decree reversing so much of the Assistant Judge's Decree as awarded any part of Balmookoond's Estate to Respondent, declared her entitled only to so much as she should prove to be still due of her husband's share of the Yujman's fees.

The Zilla Court found that Rupees 125 as sued for were still due to Respondent on account her husband's share in the Yujman

(1). Vide Bombay Cases No. 37 for the Law, and see Surat Cases No. 6 as in some measure connected with this subject.

man fees, but the Court of Appeal on further evidence awarded her the sum of Rupees 80 only, as balance due, affirming to her the right to collect her husband's one sixth of the whole Yujman fees belonging to the family as she pleased.

Decree 15th Sept. 1819.

N°. 45.

SHEOLAL and NUNDLAL Sons of.....
DHOOLUBH..... } *APPELLANTS,*

VERSUS

ICHHA, daughter of MUKKUN.....RESPONDENTS.

RESPONDENT on the 27th April 1818, filed this suit against Appellants in the Broach Zilla Court, to recover from them Rupees 592, being Rupees 400 principal, and the rest interest, expended by her on the funeral ceremonies of her mother Wuzeer Buhoo and chargeable on Appellants. Govind the Dessaee of Dejbara left two sons, Mukun, the father of Respondent, and Dhoolubh, the father of Appellants, who now represented the family, and were in possession of the Dessaeeship. Mukun formerly had a son who died before his father, leaving a widow Buhinkoonwur still alive but without issue, and the present dispute between the parties was, whether the funeral charges of Wuzeer Buhoo, widow of Mukun, were to be borne by Appellants like those of other members of the family, or by Respondent as inheriting the private property of her mother Wuzeer Buhoo, which Appellants declared to be, a house, with ornaments, clothes, and furniture.

Broach Udalut. T. Barnard, *Judge.*

Bhargow Brahmuns.

Funeral expenses of a widow chargeable on the share or Estate of her late husband, by whomsoever taken, and not against her daughter on pretence of her inheriting the stri dhun of her mother.

Respondent denied that she had received any thing besides the house, and appealed to the fact of Wuzeer Buhoo's having received a maintenance (being the produce of $4\frac{1}{2}$ Koombhas of land and Rupees 21 per annum) from them ever since Mukun's death.

The

The Shastrees were asked by whom, of all the parties, Wuzeer Buhoo's funeral charges ought to be borne?

They answered, if the two brothers Mukun and Dhoolubh had not divided their paternal property, the deceased Wuzeer Buhoo's funeral ought to be performed by her husband's Nephews, the Appellants, taking her house to themselves; but if part of the family property had been divided, and part not, then the Appellants would inherit all that had not been divided, Buhinkoonwur, the widow of Mukun's son, all that had fallen by division to Mukun, and in that case the Appellants and Buhinkoonwur were bound to bear Wuzeer Buhoo's funeral charges equally between them. If the whole Estate, real and personal, had been completely divided, then Buhinkoonwur became Heiress to that half of it, left by her husband's father, and she was liable for her mother-in-law's funeral.

Appellants admitted that a complete division had not taken place between their father and uncle, and thus acknowledged themselves liable for the Aunt's funeral expenses, but objected to the amount expended by Respondent, that it was excessive and raised in an improper manner by mortgaging Wuzeer Bahoo's house, and the land assigned for her maintenance.

Respondent proved that what she had laid out was usually spent on such occasions in their Cast, the Bhargow or Broach Brahmuns, and judgment was given in her favor for the sum sued for, it being ordered that she should with it redeem and restore to Appellants, the house and land which she had mortgaged to raise the money for her mother-in-law's funeral.

Decree 4th January 1819.

Court of Appeal, J. Elphinston, J. Romer, J. Sutherland. Decree 17th Feb. 1820.

This decision was affirmed by the Court of Appeal, with a reservation to Appellants of a right to sue Buhinkoonwur for such share of Wuzeer Buhoo's funeral expenses as might be legally exigible from the property divided between Dhoolubh and Mukun, and Buhinkoonwur being declared heiress to the share of such divided property taken by Mukun.

No. 46.

N°. 46.

HURKOONWUR, daughter of GIRDHURLAL, APPELLANT,

VERSUS

RUTTUN BAEE, with NANEE Sister of PRANOO deceased, and DHOOLLUBHDAS..... } RESPONDENTS.

Surat Udalut, W. A. Jones, *Assist. Judge,*

Bhatiya Lohana Cast.

A widow on marrying again must deliver up all her late husband's property to his daughter, in default of his nearer Heirs. Alienation of it by the widow to her first husband's nephew set aside in favor of his daughter's claim.

THIS Case was filed by Appellant in the Zilla Court on the 18th August 1818, with a view to recover from Respondents certain property inherited by Respondent Ruttun, from her husband Girdhurlal, and by her given to Pranoo. It was stated by Appellant, that Rutton her step-mother inherited the whole of her husband's property, and remained in Widowhood about five years from his death till the month of Vaeshakh last, when she came to Appellant and tendered her the whole of her father's property according to Rule, because she, Ruttun, was about to contract Natra. Appellant after some remonstrance against the necessity of her marrying again, received from her, out of the property of Girdhurlal, a portion worth about Rupees 1,400, together with the family papers, but Ruttun putting off delivery of the remainder till next day then came and said she had changed her mind and resolved to remain single, and demanded the property back. Appellant restored it on being furnished with a receipt guaranteed by the security of Respondent Dhoolubh. Respondent Ruttun had since contracted Natra and moreover made over the property of Girdhurlal, of which she his daughter was now legal heiress in consequence of his widow's marrying again to Respondent Pranoo his brother's son by Deed of Krishnarpun, and Appellant prayed that the Gift might be set aside and the property be restored to her.

Respondent Ruttun justified her Gift of the property to Pranoo instead of making it over to Appellant, by an alleged express

press injunction of her husband Girdhurlal, who she said always considered his Nephew Pranoo as an adopted son.

Respondent Nanee took the same ground of defence, and Dhoollubhdas totally denied his being surety for the property restored to Ruttun by Appellant.

Respondent got three witnesses to swear that Girdhurlal enjoined his wife to give the property to Pranoo, whilst Appellant proved that the Uncle and Nephew were divided in trade and interests, and lived separate, and she established her position that Respondent Ruttun received back the property from her.

Two members of the Cast were called to speak to the Custom respecting the inheriting of a Nephew or daughter, and they declared that the Nephew would succeed. (1)

The Court decided, that Appellant had no right whatever to the property, and her suit for it was dismissed.

Decree, 28th April 1819.

Court of Appeal, J. Elphinston, J. Romer, J. Sutherland.

The Provincial Court asked the opinion of their Shastrees on this case and they declared that Ruttun, the widow of Girdhurlal, had no right to devise her husband's property to his nephew, during the life of Appellant, his own daughter, nor had the nephew power to receive the Gift (not being a competent Donee because of the same family or Gotru?) besides that it was improper because the whole inheritable property of no man can be alienated during the existence of Heirs, for whom a certain portion must be reserved, even in a case of Gift to Bhramuns and other competent Donees.

Under this Vyuvustha the decision of the Assistant Judge was set aside, the Krishnarpun in favor of Pranoo declared illegal, and the property of Girdhurlal adjudged to be paid to Appellant either by Ruttun or by Dhoolubh the Security.

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(1) A question, "whether they alluded to a divided or united family?" would have made these witnesses confess that the rule only applied to an united family.

The right of Appellant to receive the property on Ruttun's marrying again was therefore admitted. Decree 3d March 1820.

No. 47.

WUKHTSINGH GAEMUL SINGH,.....APPELLANT,

VERSUS

CHUTOORSINGH, the son, with MANBA, the mother, OOTTUMBA, the widow, and WUKHTSINGH, the father-in-law, of TUKHTSINGH..... } *RESPONDENTS.*

THIS action was laid in the Broach Udalut on the 4th May 1818, by Respondents with a view to recover the Thakoorship of Juniyadra in the Amod Purgunna, out of which they had been ejected by Appellant. They laid their damages at Rupees 49,025. Broach Udalut T. Barnard, *Judge.*

It was stated in the plaint, that Gaemul Singh, the last Thakoor, had two sons, Tukhtsingh, by his wife Manba, and Appellant Wukhtsing by another wife. Tukhtsingh as Eldest son succeeded to the Gadee, and at his death in A. S. 1871 or A. D. 1815 left his wife Oottumba big with child, but no issue then living. Appellant persuaded the Kumavisdar of Jumboosur, the Purgunna in which Juniyadra is situated, that the pregnancy of Oottumba was fictitious, and prevailed on him to send a guard of a Jumautdar and eight men, to be at the place during the time of her confinement, where Appellant with his mother remained. He further got Ubhesingh the Thakoor of Amod, to send some of the women of his family to be present at the birth, to prevent the possibility of their defeating Appellant's succession (which was indefeasible in default of Heirs male of the body of Tukhtsingh) by a fictitious birth or a collusive change of the infant, if a female, for a male child. Under all these precautions against fraud, Oottumba brought the present Respondent, Disputed succession of a Grassiya Thakoor, said to have been fraudulently substituted whilst an infant for the real Heir deceased.

Respondent, Chutoorsing, into the world. The Kumavisdar extorted Rupees 700 from the family, and removed the guard and left them to themselves, but Appellant contrived to bribe the next Kumavisdar with Rupees 6,000 in Cash and an increase of Revenue for that year of Rupees 5,000 more, and was on this installed in the Thakoorship under pretence of fraud on the part of Respondents, who were obliged to fly to Broach. The present action was therefore laid to eject Appellant from the Thakoorship thus unjustly acquired, and to install Respondent Chutoorsingh in right of his birth.

Appellant declared, in support of his title to retain his seat on the Gadee, that the son brought forth by Oottumba died when 5 or 6 days old, and the person now calling himself Chutoor son of Tukhtsingh was actually procured from one Lukiya, a Rawuliya Fukeer at Dejbara, and passed off to the world as the real son of Tukhtsing, who died. In default of Heirs male of the body of Tukhtsingh, he Appellant, his half brother, was lawful Heir, and finding out the trick which Respondents, the women of his brother's family, had played him for the purpose of keeping the management of the Estates in their own hands, he preferred his complaint to the Kumavisdar, and having clearly established that Respondent Chutoorsingh was not his brother's child, the Kumavisdar ousted him, and put Appellant in possession of the Gadee and the rights thereto belonging. He denied that any bribe had been paid, or agreed for, to induce the Kumavisdar to install him.

Appellant having produced the order of the Kumavisdar, in the name of the Soobedar of the province, for putting Appellant in possession of the Thakoorship on plea that due investigation had satisfied him (the Kumavisdar) of the deception that had been practised by Respondents for keeping Appellant out of the succession, Respondents urged, that the order was of no force because the rights of the Grasseea Chieftains being of a political nature, no authority under that of the Peshwa himself was competent

competent to eject, instate, or take ultimate cognizance of disputes respecting them, and they instanced it by a former dispute respecting the succession of the Kherwara Raja, which was handed up to the Peshwa for decision by the Soobedar himself, being in the province at the time who would have taken cognizance of it if he could.

Appellant against this adduced a case of the Sarod Thakoor, and the present one, to shew that not only the Soobedar but his Kumavisdar, might investigate and decide in the last resort upon such cases.

The Judge, stating the case, applied to Government for information "whether the Kumavisdar of Jumboosur during the "Government of the Peshwa was possessed of authority com- "petent to determine the right of succession among the various "Grasseea Chieftains, styled Raja, Rana or Thakoor, whose "possessions lay within the Purgunnas of Jumboosur, Amod "and Dej, which were under the jurisdiction of the Province of "Jumboosur?"

The answer declared "that the decision in this case by the "Kumavisdar was not one of competent authority, and that "the Judge was at liberty to take cognizance of the action "then pending in his Court, respecting the right of succession "to the Gadee of Juniyadra." The investigation was therefore resumed.

The alleged father of Chutoorsingh, with that person's wife and son, distinctly proved that Respondent Chutoorsingh could not be of their family. The Nurse who assisted at Oottumba's delivery, and lived in the house for a month, declared that Chutoorsingh was the real son of Oottumba by Tukhtsingh, and this was corroborated by another female, whilst the Jumautdar of the Guard and the Josee employed at the nativity of Tukhtsingh's son, proved that the child lived at least fifteen days after its birth, for the former saw it every day whilst he staid, as a

matter

matter of duty, and the latter in the way of his profession lived for three months in the house and saw the child constantly, and both believed Chutoorsingh to be the same child.

On the other hand, an old female domestic of the family, but at this time in the service of Appellant, swore, that she herself buried the real son of Tukhtsingh on the sixth day after his birth in a hole dug by herself, and a sepoy was brought to corroborate her statement, and two others deposed, one that Respondent Manba came and begged a child which his wife had lately borne, the other, that he was at the house of Lukiya, the alleged father of Chutoorsingh when two persons, said to have come from Juniyadra, were counting out money to Lukiya and desired it to be kept secret.

The Court felt no hesitation from the evidence in declaring that Respondent Chutoorsingh was the lawfully begotten son of Tukhtsingh, brought forth by Respondent Oottumba, and that he was true heir to the Gadee of the Thakoor of Juniyadra, Possessions were therefore decreed to him.

Decree 14th July 1819.

This decision was affirmed in Appeal by the Provincial Court, from whose decree an appeal was preferred to the Sudur Udalut, but not prosecuted to a decision.

Court of Appeal, J. Elphinston, J. Romer, J. Sutherland. Decree 7th Sept. 1820.

N°. 48.

BEHCHUR JOITA.....*APPELLANT*,

VERSUS

JETHA JEEVUN.....*RESPONDENT*.

THE action originally was filed in the Zilla Court on the 3d September 1815, by Appellant, seeking to recover damages Rupees 500 from Respondent for loss of Character caused by his

Sudur Udalut, Charles Norris, Register. Decree 13th Feb. 1816.

his having violently and illegally put Appellant under restraint, by stopping him at a spot called Dhik Koondee, on his road to Ahmudabad, bringing him back into the town, and demanding security of him as the condition of his going free, then carrying him before the Nazir of the Udalut, and requiring that Appellant should be obliged to furnish security, thereby causing him loss of Character by exposing him before the Merchants and persons there assembled, in a manner that had never been practised since the Company's Government was established.

G. W. Anderson, *Judge*, Decree, 9th April 1818. Court of Appeal, J. Romer, J. Sutherland.

Respondent said Appellant had been his debtor for upwards of a year, but put him off from day to day when pressed for payment. He met him by accident as he was leaving Kaira, and certainly importuned him to settle accounts and pay his debt, and when Appellant resorted to his old subterfuge of promising to pay at a future time, he told him plainly, that he would not let him go until he had satisfied him, either with Cash or security, but he did not carry Appellant to the Nazir; it was the Nazir who sent for him, and demanded to know whether he had stopped Appellant. If the latter had lost his character by being publicly dunned for a debt it was his own fault for not paying it off, and no blame attached to him, the creditor, for seeking to recover his just dues.

Damages awarded to a debtor because his Crediter stopped him in the high road whilst proceeding to another town.

The Register found the duresse proved against Appellant, who was adjudged to pay the damages sued for, being justly incurred because the act had in fact diminished Appellant's credit among the Mercantile Body, without Respondent's having shewn that he had any reason at the time to believe Appellant intended to abscond under pretence of business at Ahmudabad, but rather it was apparent that business did take him away from Kaira.

The Judge, to whom Respondent Appealed from this decision, agreed with the Register that the duresse was sufficiently proved, but thought it did not clearly appear that Appellant's reputation

reputation was so deeply injured as to warrant the awarding him the full damages sued for. In fact, the act of Respondent was more faulty in itself, than as affecting the reputation of Appellant, and this circumstance must be taken into consideration in assessing damages, as well as the exciting cause, the suspicion under which Respondent labored, that Appellant, his debtor, was absconding to avoid payment of his debt. The Register's decree was amended by awarding that Respondent should pay damages, Rupees 25, only, but all Costs in both Courts.

Decree, 23d March 1819.

This decision was affirmed by the Provincial Court against Appellant, who paid Costs in that Court.

MISCELLANEOUS ORDERS, PASSED BY THE SUDUR UDALUT AT SURAT.

Extract from Merchants' Books.

THE following Certificate was found recorded in Case No. 150 of the file of the Sudur Udalut in Bombay.

At the request of Hormasjee Manockjee Vakeel, I certify that he has applied to me, as Register of the Recorder's Court, for the purpose of obtaining access to the Books, now in my official custody, of Ruttonjee Manockjee Entee deceased, with the view of making, as I understand, certain Extracts therefrom, and that I have declined acceding to his application, he, the said Hormasjee Manockjee Vakeel, not producing any order of Court authorizing me to produce such Books to him, and Burjorjee Ruttonjee Entee, by whom such Books were deposited with me, unequivocally opposing their production.

Register's Office, (Signed) EDWARD W. HUNT,
20th July 1819. REGISTER &c.

Mr. Hunt, in answer to a note from the Register to the Sudur Udalut on the subject, wrote, that there was likely to be some difficulty, because the Extracts were to be taken from private Books deposited with him under a particular order of Court, and not from documents regularly filed; that it was not competent for him to shew the Books under these circumstances, without consent of the owner, unless he received a special order but if any order of the Sudur Udalut, requiring him to exhibit the books to any particular person, were produced, he would consider it his duty to obey it, on payment of the customary fees.

An order appears to have been issued by the Sudur Udalut, for an Extract from the Books, duly attested by the Register to the Recorder's Court, was filed with the case.

The

Appointment of Wukeels.

The following Rule was passed with respect to Wukeels; that every person declaring himself, either personally or by recommendation from a Zilla Judge, to be candidate for the situation of Wukeel in any Court, must appear in the Sudur Udalut, and undergo an examination into his character, previous habits of life, and qualifications as a Pleader, before a Committee, to be composed of five or more persons, of whom two must be Wukeels of the Sudur Udalut, the proceedings being superintended by one of the Judges, or the Register of the Court.

Pleadings in the Sudur Udalut.

To prevent delay in the completion of pleadings in the Sudur Udalut, a Rule was promulgated, that the answer should be delivered in within one week from the date on which the Respondent received a Copy of the Petition of Appeal; the reply to be filed within two days from the date of the answer, and the rejoinder on the same day as the reply; the Appeal to proceed after that time notwithstanding the pleadings were not so completed, and none to be filed afterwards.

On the 14th March 1823 it was further declared, that if any person wishing to present a Supplemental petition of Appeal, should fail to do so within six weeks from the date of filing his Appeal, it would not then be received, provided the answer to the Appeal had been already filed. The time for filing the answer to a Supplemental petition to be regulated by the foregoing Rules, counting from the date of the Supplemental petition. On the 25th July, it was further ordered that all Petitions for special or summary Appeals should be presented to the Register at least two days before the time fixed for their first reading in Court, and that if presented after Tuesday, they should lie over till the following Friday week.

Copying papers in a case.

It was resolved, that the Wukeels of Court, on a verbal application to the Register, should have access to any papers for perusal or copying. On the 9th August 1822, when the four Judges sat, it was ordered that all parties in Appeals, or their

their Agents, might, on application to the Register, take copies of all Pleadings, written evidence, the Record or other documents in their own case, excepting such parts of papers, books of account, &c. exhibited by their opponents, as did not refer to the matter at issue. This resolution was caused by a refusal given to an application of the same nature made to the Surat Judge, who was directed to consider this Rule general on all occasions.

Fees on Appeals to the King in Council.

A precept was issued, on the application of the Register to the Sudur Udalut, under a Precedent of 15th July 1820, to the Zilla Judge of Surat, directing him to recover, from a person who had appealed to the King in Council, certain fees due by him on that account to the Register to the Sudur Udalut.

The following is the form under which the same Precept was issued in another case, on the 13th August 1823.

To

WILLIAM A. JONES Esq.

Zilla Judge,

Ahmudabad.

Whereas an Appeal has been preferred to his most Excellent Majesty in Council by Chorasma Kaka Bhaee Nuthoo-Bhaee, and others, against a Decree passed by the Sudur Udalut at Surat under date the 25th March 1822, wherein Chorasma Kaka Bhaee Nuthoo Bhaee, and others, were Appellants, and Waugjee Sessmuljee and Hattee Bhaee Sora Bhaee, were Respondents, and two exact copies of all the proceedings held, and judgments or orders given, in the above case, have been transmitted to the Honorable the Governor in Council for the purpose of being forwarded to His Majesty, agreeably to Regulation V. A. D. 1818; and whereas the said Chorasma Kaka Bhaee Nuthoobhaee, and others have failed to discharge the whole of the Costs incurred in

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the Sudur Udalut by the above Appeal to His Majesty in Council, amounting to Rupees (1519 0 17) one thousand, five hundred and nineteen, and seventeen reas;—you are therefore required and directed to levy (in Surat currency) the balance of the said Costs amounting to Rupees (1499 0 17) one thousand four hundred and ninety nine and seventeen reas, from any property belonging to the said Chorasma Kakabhace Nuthoobhaee and others in the city of Ahmudabad, or elsewhere within your Jurisdiction, and transmit the amount to the Sudur Udalut within twenty days from the receipt of this precept, or make a return certifying the reason for the non-execution thereof.

By order of the Sudur Udalut,
(Signed) EDWARD GRANT,
REGISTER.

Surat, 12th August 1823.

Warrant for apprehension of a Defendant in Bombay.

The Zilla Judge of Tanna having handed up copies of three Decrees, together with Petitions from the Plaintiffs, praying the assistance of the Sudur Udalut in apprehending the Defendants, then residing in Bombay, the Court addressed the following letter to the Zilla Judge.

To

EVAN H. BAILLIE Esquire,
Zilla Judge, North Konkun,

Tannah.

SIR,

In acknowledgment of your applications for the process of the Sudur Udalut, I am directed to transmit to you the three enclosed warrants, which your Nazir will execute through his peons, according to the usual practise of your Court.

These warrants, however, have been issued in the understanding that no property belonging to the Defendants is to be found, nor their Sureties, (whether of Hazir or Malzamin) forthcoming, within your jurisdiction; for in either of these cases,

you

you will be careful not to use the warrants, or warrant, as it may be, but proceed according to the General Regulations, making it a Rule, to which your particular attention must be directed, fully to state to the Sudur Udalut, on all future occasions, the circumstances which may render necessary an application to the Court for its process, which is only to be resorted to when all the ordinary means within the reach of the Zilla Court, for executing its Decrees, may have failed.

I have the honor to be &c.
(Signed) EDWARD GRANT,
Register.

Surat, Sudur Udalut,
1st February 1822.

To,

The Nazir, Naib, or peons of the Zilla Court of the North Konkun,

Tannah.

Whereas, at a Suit of Laldas Nagurdas, a Decree was passed in the Udalut of Tanna on the 13th of March 1821 against Thuckur Jadhow Laldas, and his mother Janbace, for Rupees 56-0-39¾ and including Costs, and whereas the said Thuckur Jadhow Laldas and his mother have fled to Bombay without satisfying the said Decree; therefore you are hereby commanded by the Court of Sudur Udalut, by virtue of the authority vested in the said Court by an act of Parliament of the United Kingdom of Great Britain and Ireland, passed in the 53d year of the Reign of his late Majesty George the Third, entitled, "An Act for "continuing in the East India Company for a further term the "possession of the British Territories in India, together with "certain exclusive privileges for establishing further Regula-"tions for the Government of the said Territories, and the bet-"ter Administration of Justice within the same, and for regu-"lating the Trade to and from the places within the limits of "the said Company's Charter," to take the bodies of the said Thuckur Jadhow Laldas and his Mother, if they may be found

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in the Town or Island of Bombay, or the Island of Colabah, or Old Woman's Island, and them safely keep, so that you may have their bodies before the said Zilla Court at Tannah in fifty days from the date hereof, and then and there return this writ. Dated at Surat at the 1st February 1822.

Witness, JOHN ROMER Esquire,
Chief Judge of the said Court of Sudur Udalut.
(Signed) J. ROMER,
Chief Judge.

Power of Attorney.

In consequence of the difficulty experienced by the Sudur Udalut in verifying Mokhtiyar and Wukalutnamus, presented by persons from distant stations, a Rule was passed, that in future no such Deeds or Powers of Attorney would be received, unless attested by the Seal of the Qazee or Mooftee of the place or district from which the Deed was forwarded.

Execution of Decrees.

In the case of the commercial Resident and another person holding judgments against the same debtor, and where priority of execution was granted to the commercial Resident, because the debtor acknowledged his contract with the commercial Resident, and because Section 22d of Regulation 8th of A. D. 1800, provided "that decisions in favor of foreign or private "agents or other individuals, against weavers who were in the "employ of the Company at the time they entered with such "private Merchants or individuals into the agreements on which "they are sued, shall be made with a saving to the Company "of their claims on such weavers, when proved in Court by the "list of the Company's Weavers published and transmitted to "the Judge, as directed in Section 4th, as well as by the dates "of the respective agreements and transactions between them," but where it was proved and admitted that no list of Weavers employed by the Commercial Resident was fixed up in the Commercial Resident's Office, or sent to the Udalut as prescribed by Section 4th of the same Regulation, the Sudur Udalut ruled, that the Commercial Resident had by his omission forfeited all right

to

to the preference to which he would have been entitled by that Section; that he could only be considered as a common creditor, and his decree was only exigible under the rules in force for ordinary cases.

An application was made from a Plaintiff holding a judgment of the Surat Udalut against certain persons resident at Broach, for an order to the Zilla Judge of Broach to execute the Surat Decree, and the Court, finding that the Judge of Surat had taken certain steps in execution of his Decree, directed Copy of this Petition to be forwarded to him, with instructions to notify his own proceedings in execution of the Decree to the Judge at Broach, and to call on him finally to execute the same according to its tenor.

On 12th December 1823, the second and third Judges, in a similar case at Broach, instructed the Judge of that Zilla to apply in that, and all similar cases, to the Judge of the Zilla in which the person against whom the Decree was passed resided, or in which his property was situated, for assistance in executing it, taking care to certify to him the amount still remaining to be realized out of the Decree.

The Zilla Judge of Broach referred a petition from the heirs of the firm of Nana Bhaee Ruseek, praying an order to the Judges of Surat and Broach to grant them a term of six years for satisfying the Decree passed against them in the Surat Udalut, and to let them out of the jail at Broach, or to grant them half a Rupee subsistence money per diem, as the usual allowance of two annas was not enough. The Court in answer to the Zilla Judge's reference declared the request to be inadmissible.

A petition was presented from a person confined in the Surat Jail in satisfaction of a Decree against his father, who died whilst in confinement in execution of the same. The petitioner claimed his liberty, on the plea that he was no

personally

personally liable for the Decree against his father, and if he were, that he had four brothers living, upon whom it was equally binding.

The Court asked the Shastrees, whether the body or bodies of the son or sons of a man deceased might be attached in satisfaction of a Decree against him, for which he was himself confined at the time of his death?

They answered, that the point was not provided for in the Shastru, and the Court might use its discretion.

As this was the case, and as the Court considered it the most regular mode of proceeding to file a fresh suit against the sons, the order of the Zilla Court was annulled, and the Judge directed to release the petitioner from confinement.

The Sudur Udalut ruled, in a case decided in the Sudur Udalut where the debtor was released from the Surat Jail on payment of the amount of the Sudur Udalut's Decree, that certain ornaments belonging to him and pointed out by the Appellant, might be made available to liquidate the amount expended on the debtor's subsistence whilst in Jail, since the debtor's body could not be taken on this account.

Security, before and after Judgment.

The Plaintiff, in a suit filed in the Zilla Court of Surat against two Grasseea Defendants who neglected either to appear or to give security for appearance, applied to have their grass attached in security for his demand, but his prayer was refused by the Zilla Judge. The Sudur Udalut found that it was the practice of the Zilla Court of Surat, when Grasseea Defendants omitted or refused to appear, or to give security, to attach assets belonging to them in the hands of the collector, and as no special cause for exception in this case was assigned, the order prayed for by the Plaintiff was issued.

An order was issued to the Zilla Judge at Tanna, to take Security there for a native of that place who had been allowed to file a special Appeal, but was unable to furnish the prescribed Security at Surat.

A petition was received from a party in a Suit in the Ahmudabad Court, praying an order to the Judge to admit an Appeal which he desired to file against the decision of the Assistant Register. The Judge in his return defended the rejection of the Appeal, because the Appellant could not furnish Security for staying execution of the Decree against him. The Sudur Udalut ruled, by the construction which Section 3d of Regulation 6th of A. D. 1820 bore, when taken with clauses eighth and ninth of Section 15th of Regulation 6th of the same year, that the want of security to stay execution of a Decree is not a sufficient reason for refusing an Appeal. It appeared that the Petitioner had prayed the Zilla Court to execute the Decree against him, in order to give him a right to Appeal without furnishing Security. This was refused, and the Sudur Udalut declared the Zilla Judge justified in refusing execution against the Defendant on his own motion, holding however that the Appeal, if no other objection to its admission existed, ought to have been filed, because the Petitioner, in suing out execution against himself, had declared it to be with the view of legalizing his Appeal,

A person holding a Judgment of the Broach Udalut, prayed an order to the Judge to recover the amount from the Malzamin Security without the formality of an Action against him.

The Sudur Udalut forwarded Copy of the Petition to the Zilla Judge, intimating its opinion that the security was liable without a fresh Suit.

On the 5th July, however, when a petition was presented by Nihalchund Bhaeeshah, praying an order to the Zilla Judge of Surat to recover the balance of a Decree of that Court from the Malzamin without a fresh trial, the same Judges ruled that a fresh suit was necessary, because the furnishing security was in this Case a special contract entered into after Judgment between the Malzamin and the Petitioner, for the purpose of releasing the Defendant from Jail.

A person standing security for staying execution of a Decree passed by the Sudur Udalut sitting in Bombay, now prayed the Court to relieve him from liability for deterioration of the property attached in execution of that Decree, as it proved on sale to be of less value than estimated at the time of attachment. The Court refused to grant any relief, holding the risk of all such contingent losses to attach to a Security.

The Sudur Udalut, at the motion of an Appellant, issued an injunction to the Judge of Kaira to take Security from the Respondent, binding himself not to marry his daughter before determination of the Appeal to any one but Appellant, whose claim to her hand under a previous contract of marriage formed the ground of action.

Sale in execution.

A person purchasing a house sold by public outcry by order of the Broach Udalut, being opposed in taking possession, applied to the Judge for summary redress, which was refused, and complainant referred to civil Action, on the grounds that earnest money had not been paid nor a Deed of Sale given, nor possession secured. He petitioned the Sudur Udalut, which annulled the Judge's order, delaring that payment of earnest money at a sale by public auction was neither stipulated as a condition of sale, nor neccssary to its validity; that execution of a Deed of Sale and giving possession were acts to be performed by the Court, and the penalty of their non-performance did not lie with the purchaser; that the purchase money was tendered, or ready to be paid, within the time allowed by the conditions of sale, and no objections tending to impair the confidence and good faith with which such sales were made could possibly be admitted.

Admission of Appeals.

A person confined in the Tanna Jail in execution of a Decree, from which he desired to Appeal " in formâ pauperis," enclosed a petition to that effect in a letter by Post to the Sudur Udalut. The Court directed the letter and petition to be forwarded to the Judge of the North Konkun, who was called on

to

to report whether the petition had been presented to him in the first instance or not, and he was instructed to forward it again to the Sudur Udalut with copy of his Decree, it being remarked by the Court that it was the only proper way for bringing such petitions before them.

The Zilla Judge of Surat having refused to receive an Appeal preferred against a Decree of his disallowing the sum of Rs. 150 out of a claim for Rs. 1100, on the ground that the Appeal should be laid at the full Amount originally sued for, or Rupees 1,100, the Zilla Judge's order of rejection was rescinded, and the Appeal for Rupees 150 admitted, the Sudur Udalut holding that the point at issue could not be discussed unless the Appeal were laid at the amount sought to be recovered, viz. Rupees 150, that being the sum disallowed by the Zilla Judge.

The Sudur Udalut, under the power vested in them by Section 30th of Regulation 5th of A. D. 1820, admitted a Petition of Appeal which had been refused by the Judge of Surat on the ground that the time allowed for an Appeal had expired, the Sudur Udalut holding that the time set apart for the annual holydays, which the Zilla Judge had reckoned in, ought not to be counted against an Appellant as part of the time allowed to a person wishing to prefer an Appeal, and that by Clauses 5th and 6th of Section 15th of the above Regulation, the present Petitioner was entitled to have his Appeal received.

A petition presented by a person wishing to Appeal as a Pauper, was refused under the 3d Clause of Section 12th of Regulation 1st A. D. 1816, "which empowers the Court, if upon perusal of the Petition and Copy of the Decree, the original judgment should not appear erroneous or unjust, nor the nature of the cause be of sufficient importance to merit a further investigation in Appeal, to reject the petition, and refuse the petitioner leave to sue as a Pauper. Provided however, that the petitioner should nevertheless be entitled to insti-

"tute

" tute his appeal on performing the conditions of appeal pre-
" scribed by the Regulation for persons not suing as paupers."

Three persons against whom, with twelve others, an action was laid in the Zilla Court, and whose names were included in the Decree, petitioned the Sudur Udalut for leave to join in the Appeal laid against that Decree by the other twelve Defendants. It appeared that the original suit was laid and decided for Rupees 9,939, and that the Appeal was filed by the other twelve for Rupees 8,249, or their own twelve shares alone, deducting from the amount of the Decree the three fifteenth shares of the three petitioners, who had not appeared in defence of the action in the Zilla Court. Under the provisons of the stamp Regulation, the paper used for the petition of appeal happened to be of the full value, the same as that on which the suit was originally filed in the Zilla Court, or Rupees 250, and admitting the petitioners to join in defence of the appeal could not cause a loss of revenue by making the whole amount appealed against exceed that for which the stamped paper was calculated; the Court therefore admitted them to file a supplemental petition of appeal.

An application to appeal further to the Sudur Udalut against the decision of the Ahmudabad Judge on a special appeal was rejected, because no appeal lies from the decision in a special appeal.

A person whose Appeal was decided by the Chief Judge affirming the decision of the lower Court, claimed a further reference of the case to a competent Court, on the ground that the Sitting Judge had so far amended the Zilla Judge's Decree as to fix the value of certain Jewels forming one of the Items of dispute, and that such amendment was only competent to a full Court. The prayer for a reference was rejected.

A person having presented a petition complaining that his name had been joined in an Appeal to His Majesty in Council by his Brother, contrary to his own wishes, and requesting that

it

it might be struck out, it was ordered that the petition be placed with the record of the case, and the Petitioner's Wukeel was directed to present his Razeenamah with a view to its being recorded and transmitted with the Appeal, to shew that his client's interests had ceased in the case. The Petitioner was told that if he considered himself aggrieved by the act of his brother in joining his name in the Appeal, he migth bring an action to show cause why he (the real Appellant) should not solely be held responsible for Costs.

On a petition being presented from a party in a Suit then pending in the Zilla Court of Surat, it was held for that reason the Sudur Udalut would not interfere.

The Court also declined interfering in the case of a petitioner, who prayed an injunction to his creditors to prevent a run upon him.

The Court declared in answer to a petition from the Jumaut of Ghee manufacturers (praying for an injunction to the sea Custom Master to levy the dues according to immemorial Custom) that it could not interfere, but the petitioners were at liberty to complain to the Honorable the Governor in Council.

Two Petitions were presented by the Appellant and Respondent in No. 96 of Surat Cases, each objecting to the amount fixed by an order of Court passed on the 13th February by the Zilla Judge for a monthly allowance to the Appellant until decision of her Suit then pending in the Udalut, the Appellant complaining that the allowance, Rupees 50, was not enough, the Respondent, that she was not entitled to any at all. The Court confined its investigation to the power of the Zilla Court to make such an order prior to judgment in the case. This it was declared must depend upon whether the Respondent's person could be attached, or his goods distrained under the Regulations, in execution of such order. The mode of proceeding against a Defendant prior to judgment was provided

vided for in Section 5th Regulation 2d of A. D. 1800, and Section 7th of the same Regulation laid down the process n execution of a Decree. In the latter case alone did the Regulation allow the attachment of the person, or sale of the effects, of a Defendant, provided he had given the Security required by the former Section, which the Respondent (then Defendant) had furnished. The Sudur Udalut for these reasons annulled the order passed in this instance by the Zilla Judge, but directed him to bring the Suit to a hearing out of its turn on the file, because it clearly came under the provisions of Section 18th of Regulation 2d of A. D. 1800, which authorizes the Judge " to bring on for trial before its turn, any " case, in which he may think it proper, for special reasons " which he is to state at large on the record of the trial."

A petition was presented by a Plaintiff in the Ahmudabad Udalut, praying an order to the Zilla Judge to include as Defendants three persons, partners of the Defendant, against whom he first filed his action, and whom he had moved the Court by Supplemental Petition to include as parties in the cause, and to summon for its defence, but whom the Judge had refused to call upon. Their names, the Petitioner said, were accidentally, not knowingly, omitted, and his Supplemental Petition was found filed with the Record of the Suit. The Court held that it was incumbent on the Zilla Judge, when he allowed the Supplemental Petition to be filed, also to proceed against the persons therein named as Defendants, since the mere filing the Petition without further process was of no service to the Plaintiff, and such further process on it was necessary to give effect to Section 5th of Regulation 2d of A. D. 1800, which provides for the filing of Supplemental pleadings on both sides. The prayer of the Petition was therefore granted.

The Acting Collector of Broach having reason to believe that a Village Tullatee had given in fabricated accounts, called on the Zilla Judge by letter, to compel the Tullatee under the provisions of Section 7th of Regulation 2d of A. D. 1814 to swear

swear to the truth of the accounts, which the acting Collector caused to be produced. On the Judge expressing doubt as to the applicability of the above Section to this particular case, the Acting Collector required him to refer the point to the Sudur Udalut. That Court in the first place remarked, that the application by letter to the Judge was contrary to the spirit of the Regulations, which required that no application should be made by any party except by motion written in the language of the country. Independent of its being the course prescribed by law it had the advantage of being intelligible to the opposite party, which no correspondence in English could be. Such motion in the present case should have been made through the Government Pleader. The request to the Judge to refer the point also was irregular; the Acting Collector could only be recognized in this matter as a common suitor, and to sanction the present mode of proceeding would be conceding to him what was denied to all other Suitors. It was in his power to appeal against any act of the Zilla Judge; and a summary Appeal would in this case have been admitted. The Tullatee's compliance with the Acting Collector's demand, would have subjected him to a criminal prosecution, and the penalties of Section 9th of the same Regulation would have fallen on his associates, who, without the Tullatee's affidavit, must go clear. But no such harsh construction could be placed on these Sections; the process was not meant to be at the instance of a Collector, as he had other remedies against production of false accounts. The penalties applied only when Tullatee's accounts were regularly in evidence before a Court, and he swore to false ones. The Sudur Udalut held therefore that the Acting Collector must proceed in the case against the Tullatee under Regulation 4th of A. D. 1814, the latter being at liberty to sue him to shew cause why he should not be proceeded against under Section 7th of that same Regulation.

TRANSLATION

OF THE

INDEX TO THE MITAKSHURA.

BOOK THE FIRST,

ACHARADHYAYU,

ON ESTABLISHED RULES OF CONDUCT, OR ORDINANCES.

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BOOK THE SECOND.

VYUVUHARADHYAYU,

ON THE LAWS AND CUSTOMS OF THE PEOPLE.

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Account of Descents in the Male and Female lines, ten in each line from the the Propositus, 21 persons in all, ...	Ek Vioonshuti Sunkhya.	
Head of the line, ...	Punkti Sunnibhu.	
His three next descendants, son, Grandson, and Great grandson, ...	Pindanoolepu.	
The Great grandson's son, Grandson, & *Great grandson*, ...	*Tyujuku*, or *cut off* (from the Parvunu oblation of Propositus.)	
The second *Great grandson's* son, grandson, great grandson, ...	*Pindu* BHOOKU, or Parvunu (1) ENTITLED *to a funeral cake* (from the Propositus.)	(1) The Parvanu, or Ancestors entitled to a funeral oblation, are 1st the Father, grand and great Grandfather: 2d the maternal Grandfather, great Grandfather, and his father; 3d the mother, Paternal Grandmother, and great Grandmother; 4th the Maternal Grandmother, great Grandmother, and great great Grandmother on that side.—Dict. Mun. 71, 84, 85, 106, 115, 120, 121, 163.
His son, the Propositus or self, ...	Atma.	

THE ASCENT OF THE ABOVE IN THE MALE LINE IS AS FOLLOWS.		MUHARATTA.	GOOJURATHEE.
Propositus or self, ..	Atma.		
Father, ...	Pita, ...	Bap, Tirthuroop,	Bap.
Grandfather, ..	Pitamuhu, ...	Aja, ...	Dada, Vuroowa.
Great Grandfather, ..	Prupitamuhu, ...	Punja, ...	Purdada.
Great grandfather's father, ...	Vridh prupitamuhu,..	Nipunja.	
——— grandfather,	Vridhtur Prupitamuhu.		
——— great grandfather, ..	Vridhtumu Prupitamuhu, (2)		
Tritavi Pater, ...	Pindanoolepu.		
——— Avus, ..			
——— Proavus, ...			
Abavus, ...	Punkti Sunnibhu, (3)		

(2) Tritavus, called also Kootusthu, or common stock of the descending Supinda Relations. A Supinda Relation is any one within seven removes from a common ancestor. For instance, in Blackstone's Commentaries, Vol. 2d Ch. 14th, the Adnepos of Propositus and

(VII 6) {are Supindas descended from the common} (Pater 1)

who is the Kootusthu and counts each as Trinepos.

(3) Head of the Line, Highest Grade, *Mool pooroosh (Muharatta.)*

Propositus

FEMALE LINE.		MUHARATTA	GOOJURATHEE
Propositus, ...	Atma, ...		
Mother and stepmother,	Mata, Saputna Mata, ..	Aee Savutru Aee,	Mah, Saveki Mah.
Grandfather, ...	Matamuhu, ...	Aja, ...	Vuroowa.
Great grandfather, ...	Prumatamuhu, ...	Punja.	
Great grandfather's father, ...	Vridh-prumatamuhu, ..	Nipunjee.	
——— grandfather, ...	Vridhtur prumatamuhu		
——— great grandfather, ...	Vridhtumu prumatamuhu.		
As above, ...	Pindanoolepu. Punkti Sumithu.		

RELATIONS BY CONSANGUINITY AND AFFINITY.

ENGLISH.	SANSKRIT.	MUHARATTA.	GOOJURATHEE.
Paternal Uncles....	Pitruvyuku, ...	Choolta	Kaka.
Their Wives, ...	Pitruvyukee, ...	Chooltee, ...	Kakee.
Their Sons, ...	Pitruvyukeyu, ...	Choolut Bhao, ...	Pitraee Bhaee.
—— Grandsons, ..	Pitruvykeyuju, ...	Choolut Choolut Bhao, ...	Purpitraee Bhaee.
Full Brothers, ...	Suhodur Bhrata,....	Sukha Bhao, ...	Suga Bhaee.
Their Sons, ..	Bhratruvyu, ...	Pootniya, ...	Bhutrijo.
—— Grandsons, ..	Bhratruvyuju, ...	Pootniya che lenk, ..	——— no Chhokra.
Half Brothers by the same father, ...	Saputnu or Bhinnodur Bhrata,....	Savutru Bhao, ...	Savuka Bhaee.
A Son, ...	Poottru, ...	Poottru, ...	Deekra or Chheya.
— Grandson, ..	Powtru, ...	Natoo, Puntoo	——— no Chhokra.
— Great grandson,..	Prupowtru, ..	Nipuntoo, ...	None.
A wife, ...	Putni, ...	Baeeko, ...	Dhumiyanee.
A son's wife, ..	Snoosha, ...	Soon, ...	Vuhoo.
Husband's Eldest Brother, ..	Jyeshtu, ...	Vudeel Dirh, ...	Jethu.
——— younger brother, ...	Devur, ...	Dhakta Dirh, ...	Deeyur.
Their respective wives, ...	Jyeshtani; Devurani,	Vudeel and Dhakta Jaoo, ...	Jethani; Derani.
A brother's wife,....	Bhratru putni, ...	Bhaojaee, ...	Bhabhee.
Maternal Grandfather, ...	Matamuhu, ...	Aja, ...	Vuroowa.
——— Great Grandfather and..	Prumatamuhu, ...	Punja, ...	Pur Dada.
——— his father,	Vridh prumatamuhu,	Nipunja, ...	None.
Their wives respectively, ...	Matamuhee, ...	Ajee, ...	Vuriaee.
	Prumatamuhee, ...	Punjee, ...	Pur Dadee.
	Vridh prumatamuhee,	Nipunjee.	
Maternal Uncle, ..	Matoolu, ...	Mama, ...	Mama.
His Wife, ...	Matoolani, ..	Mamee, ...	Mamee.

ENGLISH.	SANSKRIT.	MUHARATTA.	GOOJURATHEE.
A full Sister, ...	Bhugini, Svusa, ...	Buhin, ...	Bhen.
Her Husband and son, ...	Bhagineyu, ..	Saluk, ...	Bunevee.
		Bhacha	Bhanej.
Her son's wife, ..		Bhache Soon, ..	Bhanej Buhoo.
Daughter, ...	Doohita, ...	Moolgee, ...	Deekree.
Her son,..	Dowhitru, ...	Natoo, ...	——— No Deekra.
——— and daughter,	Dowhitri, ...	Nat, ...	——— — Deekree.
——— Husband, ..	Jamata, ...	Janvaee, ...	Jumaee.
A Wife's Brother, ..	Saluku, ...	Saluku, ...	Sala.
——— Mother, ...	Svusroo, ...	Sasoo, ...	Sasoo.
——— Father, ...	Svusrooru, ...	Sasura, ...	Susra.
——— Sister, ..	Salukee, ...		Salee.
———Brother's wife,	Salukee, ...		Salayuli.
Maternal Uncle's son,	Matooleyu, ...	Mameyu Bhao, ..	Molaee Bhaee.
Paternal Aunt's son,	Pitru Svusregu, ..	Atyu Bhao, ...	Phoyaee Bhaee.
Maternal Aunt's sons,	Matru Svusreyu ..	Mawus Bhao	Musyaee Bhaee.
A Wife's sister's husband, ...		Sadhoo, ...	Sadhoo.
A mother's Sister, ..	Matra Svusa, ..	Mawusee, ...	Masee
A Father's Do.	Pitru Svusa, ...	Ant, ...	Phoee.
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——— Maternal do.		Mame Sasura, ...	Mama Susra.
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——— Maternal Do. do.		Mawus Sasura,.....	Masa Susra.

END OF THE FIRST VOL.

Shreecrustna Jagonnathjee Prabhoo, Printer.

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